

Pedants, Practitioners and Prophets: Legal Education at Osgoode Hall to 1957

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PEDANTS, PRACTITIONERS AND PROPHETS: LEGAL EDUCATION AT OSGOODE HALL TO 1957

by

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FOREWORD

On July 1, 1968, Osgoode Hall Law School severed its connection with the Law Society of Upper Canada and became the Osgoode Hall Faculty of Law of York University. So momentous an event in the life of the school served to emphasize the unfortunate fact that no comprehensive history of Osgoode Hall's role in legal education yet exists. The following paper is an attempt to fill this need.

It will hardly be necessary to remind readers of this history that the work is not definitive. Some very important sources of information have not been made available to the authors and some available sources have not been consulted. Modesty of ambition is not pleaded as an excuse for the inaccuracies and misjudgments which may have crept into the study; the authors hope only that their failures will induce scholars of greater depth and quality to write a complete and final account of Osgoode Hall's contribution to the social, political and legal life of this nation.

A note on our research: The history of the law school in the past sixty years (approximately) lies within living memory. Many men who have been associated with Osgoode Hall during this period have been consulted by the authors. Barristers, Professors, Benchers and even members of the Judiciary have been kind enough to contribute to our research and answer our inquiries. We requested frankness of a traditionally discreet profession and promised in turn to use the information given discreetly. A few of our informants were generous enough to allow themselves to be quoted; many suggested that their names might be mentioned as research sources, others spoke very frankly and helpfully but could not allow their names to be used in any way. In the end we regretfully came to the conclusion that it would be best to omit completely the citation of materials taken *viva voce* and to preserve the anonymity of all our contributors. Where the actual words of these men are used in the text they are placed in quotation marks and are usually preceded with phrases such as "as a friend has said" or, "as one observer commented". These interviews added a great deal to our study and at some crucial points (such as the account of Dr. Wright's resignation) they are the basis of essential parts of the history itself. We would like to express our appreciation and gratitude to the many members of the profession who have helped us; we trust that their confidence in our discretion was not misplaced.

The authors of this history and their respective contributions to it are as follows: Brian D. Bucknall (B.A. McMaster, LL.B. Osgoode Hall, a member of the 1968 graduating class) was the general editor and writer of the paper. He also did the research for Chapter III, the Falconbridge period. Thomas C. H. Baldwin (B.A. Michigan State, LL.B. Osgoode Hall, a member of the 1968 graduating class) did almost all of the research on Chapters I and II (the period 1800 to 1923) and contributed written pieces to the final draft of the work. J. David Lakin (B.A. University of Western Ontario, LL.B. Osgoode Hall, a

member of the 1968 graduating class) researched the events surrounding the 1949 crisis (Chapter IV, part I). Gordon I. Kirke, James Zener (B.A. Toronto) and Joseph N. Solomon (B.A. Toronto), all of whom were second year students of Osgoode Hall, were responsible for research on the decade 1950 to 1960. Professors H. W. Arthurs and G. E. Parker of Osgoode Hall Law School supervised the project.

CHAPTER I: LEGAL EDUCATION IN UPPER CANADA; 1800 to 1889

I. *The Law Society of Upper Canada*

In the centuries-long history of the English common law the responsibility for training young men in the practice of law traditionally rested with the legal profession itself. It is only in the last one hundred and fifty years that academic legal studies have become a generally accepted prerequisite to entry into the profession. In England from medieval times onward the aspiring barrister or solicitor was virtually an apprentice in the legal trade.¹ The Inns of Court, for all of their moots, debates and semi-formal lectures were not a university or law school, just as Blackstone's Oxford lectures in the common law were not, in the professional sense, a legal education.

As could be expected, the system of training in the law through practical work done under the guidance of a qualified member of the bar followed the English emigrants to the colonies.² Indeed, the articling system, for this it was, could be said to have flourished under the primitive colonial circumstances. It was an eminently flexible form of education and was, furthermore, conveniently and naturally geared to the intellectual and technical capacity, great or small, of the barristers who administered it.

This method of legal education received official recognition in Canada at a very early date. In 1785 an ordinance was passed in the Old Province of Quebec requiring that no one could practice as a barrister, advocate, solicitor or proctor unless he had articulated for five years to some advocate or attorney duly admitted and practising in the province or elsewhere in the Empire. The ordinance further provided that no one could be admitted to practice until he was examined and found of fit capacity by a "most able" barrister, in the presence of either the Chief Justice, or two other Justices of the Court of Common Pleas.³

Six years after this enactment, in 1791, old Quebec was divided into Upper and Lower Canada and in the year following the separation (1792) the Legislative Assembly of Upper Canada passed an Act which made the law of England in matters of property and civil rights the appropriate law of Upper Canada.⁴ At this time, however, there were only two men in the whole territory of Upper Canada who were

¹ Indeed, the term 'apprentice' was used of students of the law as early as 1292. See T. PLUCKNETT, *A CONCISE HISTORY OF THE COMMON LAW*. (London, Butterworths, 1948), 206 and 212.

² The first legal education in Canada was in the French civil law and not in the Common Law. One Tours-Guillaume Verner, a member of the bar of Paris and Procureur-Général of the Supreme Court of New France, is recorded to have lectured twice weekly in law from 1728 until his death in 1758. The lectures were not continued after his death. See Riddell, *The First Law School in Canada—1742-1758*, April 1, 1932, *BENCH AND BAR*, 12.

³ Read, *The Bar of Ontario Eighty Years Ago* July-Dec. 1878, *THE CANADA MONTHLY*, 65-68, 489-497.

⁴ *Id.*

trained lawyers competent to plead the English Law. These men were Walter Roe, in Detroit, and the Attorney General, John White, who was at Newark.⁵ Under the circumstances it was vital that the number of legal practitioners be increased and in 1794 "An Act to Authorize the Governor or Lieutenant Governor to Licence Practitioners in the Law" was passed. The Act allowed the licensing for the practice of law of up to sixteen of "His Majesty's liege subjects . . . as he shall deem from their probity, education and condition in life best qualified to Act as Advocates and Attornies in the conduct of all legal proceedings in this Province."⁶ The emphasis on social, as opposed to academic, qualifications is noteworthy and was probably inevitable. It does not, in fact, appear that the powers granted by this Act were exercised until 1803; the first increase in numbers of practising lawyers came not as a result of the Act but as a result of the establishment of the Law Society of Upper Canada.

* * * *

The Law Society of Upper Canada was founded at Newark on July 17, 1797 by a meeting of lawyers convened pursuant to an Act of the Legislative Assembly of Upper Canada (37 Geo. III, c. 13), passed in order to "establish law and order" among the new society's founders and to "[secure] to the province and the profession a learned and honourable body to assist their fellow subjects as occasion may require and to support and maintain the constitution of the province." At that first meeting fifteen lawyers were called to the Bar of Upper Canada and three rules were passed: first, that the Attorney-General, Solicitor General and the four most senior barristers were to be Benchers of the Society, with the most senior of them being Treasurer; secondly, that each member of the Society should pay a fee of £5 annually; and thirdly, that each student should pay, in addition to the £5 per annum membership fee, £10 on admission as a student, and £20 on call to the bar.⁷

By the time it met again the Law Society had followed the government of the young province in its move from Newark to its new seat at York. At York, on July 13, 1799, the Society held its second meeting and at that meeting the first student-at-law was both admitted and called to the bar. This student was one William Weekes, and his life as a lawyer in Upper Canada was both brief and colourful. Weekes had been a student of Aaron Burr before coming to York and he died in 1806 in a duel with his "friend and colleague" and fellow legal practitioner William Dickson.⁸

⁵ Riddell, *The Courts of Upper Canada* in J. E. MIDDLETON ed., *MUNICIPALITY OF TORONTO CANADA, A HISTORY* (1923), Vol. II, at 604; note that Newark was on the site of what is now Niagara on the Lake.

⁶ Read, *supra*, note 3.

⁷ Riddell, *The Law Society of Upper Canada in 1822*, (1926) 23 *ONTARIO HISTORICAL SOCIETY: PAPERS AND RECORDS*, 450-61. The Records of the Law Society for the period from 1797 to 1808 are very sparse; the largest part of them are presumed to have been lost when the first House of Parliament of Upper Canada was razed "by the incendiary hand of the invader of 1813". See Read, *supra*, note 3.

⁸ Riddell, *supra*, note 7.

The Law Society was equally, though perhaps more honourably, unfortunate in the choice of their second student. In 1801 Angus Macdonnell had been made the first Treasurer of the Law Society and in 1803, his nephew John Macdonnell was admitted as the Society's second student. John Macdonnell was called to the bar five years later (in the Easter term of 1808) and subsequently went on to become Attorney General of the province. His career was concluded with tragic swiftness when he fell while in attendance on General Brock as Provincial Aide-de-Camp during the Battle of Queenston Heights on October 13, 1812.⁹

The statute of 1794 which authorized the licensing of legal practitioners was finally exercised in 1803 when Lieutenant-Governor Hunter designated Doctor (of medicine) William Warren Baldwin of York; William Dickson of Niagara (who subsequently shot Weekes in the affair of honour aforementioned), D'Arcy Boulton of Augusta and John Powell of York as "fit and proper persons to practice the profession of the law, and act as advocates in the courts, after having been duly examined by the Chief Justice."¹⁰ It is not recorded why these men were called to the bar under the Act rather than by the Law Society but it was presumably because not all of them, if any, had formal legal training.

In 1808 the Society admitted three more students and the admission of students was a regular occurrence thereafter. By 1812 there were sufficient law students in the province that their contribution to the war effort was noted by the legislature. In 1815 a special Act was passed shortening the articling period for law students who had borne arms during the late unpleasantness.¹¹

The total of young men admitted to the status of student-at-law had risen to 112 by 1822; of these 65 had been called to the bar. Prior to that year there was an alternative route to becoming a barrister in Upper Canada; Judges of the Court of King's Bench were empowered by the legislature to admit barristers of England, Scotland and Ireland or any British North American Colony to practice in the province. In 1822 an Act was passed by the Assembly which laid the foundation for all future organization and governance of the legal profession in Upper Canada and Ontario. Under that act, the Law Society of Upper Canada was constituted a "body corporate and politic in deed and in law" and was vested with all powers outside of the legislature to admit persons to practice in the province.¹² Furthermore, the Act began the

⁹ Read, *supra*, note 3.

¹⁰ H. SCADDING and J. DENT, *TORONTO PAST AND PRESENT* (Toronto; Hunter Rose & Co., 1884), 33. Dr. Baldwin evidently continued to practice medicine after his call to the bar. It is told that he once interrupted his pleading of a case to deliver a baby. He resumed argument upon returning to the courtroom by announcing "It was a boy". See G. A. JOHNSON, *OSGOODE HALL LORE* (Toronto, The Lawyers' Club, 1955), 8.

¹¹ J. E. MIDDLETON, ed., *MUNICIPALITY OF TORONTO CANADA, A HISTORY*, VOL. 1 (1923), 135.

¹² Riddell, *supra*, note 7. The Act in question was 2 Geo. IV, c. 5. In 1831, the status of persons acting under the auspices of the Law Society of Upper Canada in its new role as a "body corporate and politic" was finally resolved.

[Footnote continued on page 144]

process which was to result eventually in the ending for all practical purposes, of the distinction between barristers and solicitors. By the 1797 Act, students who had been on the Rolls of the Law Society for a period of three years, became attorneys or solicitors, a further two years of service made them barristers. The Act of 1822 ended the Society's powers to create solicitors and made the five-year period of service and call to the bar the only entrance to the profession within its control. Henceforth, though solicitors could and would be created by the courts, the importance and influence of the Law Society and the popularity of its status of barrister relegated the profession of solicitor to secondary importance.

Though the Act of 1822 may at the time have done little more than give formal recognition to already developed practices, its significance should not be underestimated. This Act confirmed in the Law Society its complete power over the education and admission of persons to the bar of the province. The ideas of the men who formed, who governed and who influenced this "body corporate and politic" shaped the lives and thoughts of law students and, through those students, the legal and political life of the province for the next century and a half.¹³

2: *The Life of the Law Student in the Early 19th Century*

"I served the writs with a smile so bland,
And I copied all the letters in a big round hand."
(Gilbert and Sullivan)

As has already been noted, one's qualification for the practice of law in the early 19th Century included a number of desirable social qualities but little in the way of formal legal training. The Law Society was to be a "learned and honourable body"; the Governor could license practitioners on the basis of their "probity and condition in life" as well as on their education. This view, that the gentlemen of the law were first of all gentlemen of some learning in the non-legal disciplines, led to the establishment of examinations for the young men who applied to the Society to become students-at-law. In the early days the tests that faced such applicants were not too severe but in 1825 the Law Society decided to make the initial examination a more trying one. The following extract from the *Journal* of the Law Society of 1 July, 1825, will give some indication of the qualities of mind that the Society looked for in its aspiring members:

"Whereas no small injury may be done to the education of that portion of the youth of the country intended for the profession of law by confining the examinations to Cicero's Orations, . . . it is unanimously resolved that in future the student, on his examination, will be expected to exhibit a general knowledge of English, Grecian and Roman History, a becoming

It was decided that the "Law Society of Upper Canada", which had been created by the Act of 1797, was made up of all students and Barristers; while the Corporation of the Law Society of Upper Canada" was made up of the Benchers and the Treasurer, with power to make rules in Convocation binding on the Society.

¹³ *Id.*

acquaintance with some of the selected prose works of the ancients, such as Salust or Cicero, or any other author of equal celebrity which may be adopted as the standard books of the several district schools, and it is also expected that the student will show the Society that he has some reasonable portion of mathematical instruction."¹⁴

The extent to which these requirements were met by rote memorization will be seen later.

Once a young man had attained the position of student-at-law he was left to work out his legal training in such manner as he, or his principal, thought best. Some concern is shown for the lot of the law student. An amendment (unfortunately defeated) to the 1822 Act proposed that students' admission and call fees be lowered.¹⁵ Furthermore, in the preceding year, a group of Barristers joined with some students to form the "Advocates Society". The Society was founded in order to further the students' legal training and set about its duties with a ponderous slate of officers (including The Benchers, the Keeper of the Great Seal, the Treasurer, the Advocate, and the Prothonotary, as well as senior and junior students)¹⁶ and a program of debates, mock trials and moot courts. Regrettably the group disbanded in 1825 and from that time until 1848 law students had no formal or quasi-formal instruction in their profession.¹⁷

The construction of Osgoode Hall did little to change the tenor of student life. Prior to its erection the Benchers met and law students were examined at "Russell Abbey" which was the seat of the Ontario government at the time. Osgoode Hall (named, of course, after the first Chief Justice of Upper Canada and built on land purchased from Sir John Beverley Robinson for £1,000) was begun in 1829 and completed in 1831. At that time the Hall, which was built at a cost of £500, consisted only of the present east wing.¹⁸

Convocation first sat at the new Osgoode Hall on the 6th of February 1832. Before the year's end, Barristers and law students were lodged there. These gentlemen paid £37. 10s. per year for room and board and had to supply their own beds, towels and arrange for personal laundry. Separate meals could be purchased at 1s. 2d for breakfast, 1s. for lunch, and 1s. 6d. for dinner. A bottle of wine could be had for 5s.¹⁹

Several very interesting accounts of events in the lives of law students of the time have been recorded. The first step for a prospective student was, as has been mentioned, to go to York and be examined by the Benchers for admission as a student-at-law. One Patrick McGregor, a young Scottish immigrant to Upper Canada, told, in his diary, of going through this ordeal in the year 1834. Mr. McGregor had arrived in Kingston, fully intending to proceed directly into the study of law.

¹⁴ Quoted in Read, *supra*, note 3.

¹⁵ Riddell, *supra*, note 7.

¹⁶ Gillis, *Legal Education in Ontario — An Historical Sketch*, (1904) 4 CAN. LAW REV. 101-7, 192-9.

¹⁷ J. C. HAMILTON, *OSGOODE HALL: REMINISCENCES OF THE BENCH AND BAR* (Toronto: The Carswell Co. 1904), 23.

¹⁸ ROBERTSON'S LANDMARKS OF TORONTO, Vol. V. (1908), 22-3. See also G. A. Johnson, *supra*, note 10, at 3.

¹⁹ J. E. MIDDLETON, ed. *supra*, note 5, at 150.

He was surprised, however, to find that he must first prepare for the preliminary examination. His preparations, done between February 7 and April 18, 1834, included studying six books of Euclid; Paley's *Moral Philosophy*; Algebra; Tyler's *Elements of General History*; Goldsmith's *Greece and Rome* (abridged); Geography and Astronomy; Cicero's *Select Orations* and some Virgil.

He then set out for Toronto (York became Toronto during the period of his studies) on board the steamer "St. George". McGregor had as companion for the trip, among others, another young student, John Alexander Macdonald. They arrived at Toronto on April 21st and took a room at a boarding house near Osgoode Hall. Patrick McGregor described his examination and his 130-year old jottings give us some insight into the legal profession of that time:

"26th—Saturday. After delaying some time, till there was a quorum, we were examined. I was called in, and Baldwin gave me the 7th chapter of Cicero's speech on the Manilian Law to translate. As I had read it over at Smith's, I gave in my translation long before the others, and translated the passage without any assistance from the rest. Some of them had no translations, but they all had some assistance from the rest. We were afterwards called in to read our translations. Knowing their prejudices, I imitated the English style, as well as I could, and succeeded.

"I was then ordered to translate and parse. This I did to their satisfaction, and fortunately was able to answer the History questions put to me, and demonstrated some of the propositions given me by the Attorney-General like A.B.C. I should, for they were very simple. They were satisfied, and I was discharged. I had petitioned for the Senior, but had no expectations of passing this. However, I was called in by the Treasurer; and he said solemnly: "I am desired by the Convocation to inform you that you have passed and have been classed as an Optime; being the first that has obtained that honour." I felt a little proud of this although I concealed it, for in their regulations they state that one cannot pass as an Optime unless he is above twenty and has received a college education. I am under nineteen and have never entered the walls of a college."²⁰

Another account of student life in these years is found in Charles Durand's *Reminiscences*. Mr. Durand tells of his days as a student in Mr. Berrie's law office at Hamilton, and of his trips to Toronto to become a student in 1831; to "Keep Term" in 1834, and to be called to the Bar in 1836.²¹ Durand began working in the law office, as did many students, before he was admitted to the Law Society. He recalled that "although writing [my principals documents] as my duties required me to do, I found time to write books about various things, a book on birds and one on trees, several on poetry, and a great many political letters in the Hamilton *Free Press*."²² He told of his first trip to York, in 1831, in order to be entered on the books of the Law Society as a student:

"In the old days of Canada, in Upper and Lower, all journeys were made by stages, and this journey of mine was so made in the winter—January, 1831 . . . It took one full day to go from Hamilton to York on the Government Road."²³

²⁰ Kilgour, *A Note on Legal Education in Ontario 125 Years Ago*, (1960) 13 U. TOR. L.J. 270.

²¹ C. DURAND, *REMINISCENCES OF CHARLES DURAND, OF TORONTO, BARRISTER*. (Hunter, Rose and Co., 1897).

²² *Id.*, 76.

²³ *Id.*, 121.

[Mr. Durand then commented upon Osgoode Hall:]

"Which consisted of only one stone building, the old East Wing, where I went to enter my name and file papers. . . .

"An incident occurred to me as a student, going up the old stairs, still there, in the old East Wing of Osgoode Hall — William Warren Baldwin, . . . although called a reformer, yet was a haughty prejudiced, Protestant Irish gentleman, and wonderfully set in all his ways and notions of propriety towards young men and law students. He was in 1831 a Benchler, probably, and also the Treasurer, I think, of the Law Society.²⁴ We met halfway up these stairs, [I] going up, he coming down; and although accustomed to be courteous to my superiors, not then knowing him or who he was, I did not take off my hat to him. He spoke out angrily: 'Sir, why do you not take off your hat?'²⁵

"In February of this year, 1836, I went to Toronto and we were examined by the Benchers, with many others, and among them John A. Macdonald, who was my junior in years. I was admitted with honours."²⁶

Mr. John Clelland Hamilton, in his *Osgoode Hall*, described something of the students' life in the offices of Baldwin and Son at 5 King Street West²⁷ in Toronto during the 1830s:

"Many more applications had to be made at Osgoode Hall, during the progress of suits, than has been the case since the jurisdiction of local offices has been enlarged, and each Assize town has possessed a fair law library. Every morning there were motions in Chambers, and on set days, applications in Court in matters sent up from country towns and villages. Modern appliances were then unknown. There was no telephone, no elevator, no typewriter or fair lady clerks; all papers had to be copied by hand. As each student entered he was directed to a printed decalogue, or set of rules, in the hope that he would guide his course with this as a vade mecum. In early days, before the Law Society lectures were established, heads of the office used to read law with the students.

"Many of the young men were industrious, but it is hoped that the recording angel omitted to put down in his faithful ledger some of the things that happened at No. 6. The front window had its attractions with its moving panorama. On a fine afternoon every new bonnet was admired, and he was happy who got a glance from fair eyes beneath. Officers from the garrison, soldiers with their little canes, the Governor with an aide or perhaps one of the Judges, Lady Head in her sleigh with bear skin robes, were seen. There were many a whim and repartee — a pun from tall L., a sly joke from little Mac., or a witticism from R. There was much good humour which sometimes effervesced among the half score of young men here meeting, and there were incidents which are still the source of amusement.

"When work pressed, W., a Cockney scrivener, was called in to engross important papers, and when the partners were out of the way, it was this lively gentleman's delight to stand up among the applauding students and render in fine style the cries of London street vendors.

"A tin tube communicated from the reception room to Mr. Baldwin's sanctuary above it. A country client, while waiting for Mr. Wilson, asked leave to smoke his pipe. "You are quite welcome," answered one of the gay blades, "but just sit by that pipe and smoke up it." The unwonted invasion soon brought down the senior partner, who saw the good farmer contentedly puffing away at the mouth of the tube; but no student was in sight, each had suddenly found that he had a notice to serve or a paper to file.

²⁴ Dr. Baldwin was not Treasurer of the Law Society in 1831. The periods during which he was Treasurer were: M.T. 1811-M.T. 1815; M.T. 1820-M.T. 1821; M.T. 1824-H.T. 1828, and H.T. 1832-H.T. 1836.

²⁵ C. DURAND, *supra*, note 21, at 128.

²⁶ *Id.*, 271.

²⁷ The address has been recorded elsewhere as 4 King Street West.

"One autumn day Mr. Baldwin received a letter from Richmond Hill asking advice. The case stated was as to a flock of a neighbor's turkeys that insisted in perching each night on a fence common to the two properties, often gobbling lustily, and disturbing the house of the complainant, who felt aggrieved and sought to know his legal remedy.

"Mr. Baldwin instructed a clerk to answer that really he could not advise on so insignificant a matter. Then came the indignant reply, saying that the facts could be proved by 'Bob and the boys', that, though humble, he was honest, and should be protected and told what his rights were.

"The correspondence, to and fro, was kept up until Thanksgiving Day removed the cause. It leaked out that the letters were all written in the office, and the imaginary case put was what a student sadly addicted to punning characterized as a 'fowl' conspiracy to test the temper of the amiable chief."²⁸

Dr. Scadding, in one of his historical works on Toronto, described the scene in the City on Sunday, December 3rd, 1837, during the rebellion, and noted that the City Hall, Upper Canada Bank, Parliament Buildings, Government House and Osgoode Hall were all in a state of defence,²⁹ with doors and windows barricaded with two inch planks loopholed for musketry. Research has turned up no accounts of partisanship or active roles taken in the rebellion by law students, other than an obvious sympathy for the rebel cause apparent in Mr. Durand's *Reminiscences*. While it is purely conjecture, it would seem to be a fair conclusion that then, as now, law students were loath to make political commitments, so long as they retained their subordinate status.

In 1870, another hurdle, in the person of one Hugh Nelson Gwynne, was set before the applicant student. Gwynne, who was something of a classicist and had been a scholar at Trinity College, Dublin, was in that year made Secretary and librarian to the Law Society. In his additional capacities of Sub-Treasurer and Examiner (offices in which he acted under the direction of the Benchers) he put law students through hoops for thirty-two years.³⁰

Mr. Gwynne was described by Mr. John Clelland Hamilton, a close friend, as having been of more than medium stature with a . . .

"fine head crowned with snow-white hair, which protruded from under a russet wig.³¹ He was clean shaven, observant, and ready in reply and repartee. A bachelor, with a high treble voice, wearing a gown when on duty, he was the lion in the way of applicants for admission to the Society and, during the age in which he held sway, the most notable character of the Hall."³²

Though there are a number of anecdotes concerning Mr. Gwynne, the Secretary's character is perhaps best illustrated by the following-short remark attributed to him on the occasion of a visit to a county town:

"This is D - - - ville. Mr. Brown lives here. He came up to see me once at Osgoode Hall, on the subject of a little Horace and Euclid, you know. Nice

²⁸ J. C. HAMILTON, *supra*, note 17, at 150-2.

²⁹ H. SCADDING and J. DENT, *supra*, note 10, at 179.

³⁰ J. C. HAMILTON, *supra*, note 17 at 25. Hamilton's book is, in fact, dedicated to Hugh Nelson Gwynne.

³¹ Another account described the wig as "strawberry".

³² J. C. HAMILTON, *supra*, note 17 at 25.

man, Mr. Brown, very nice man. Mr. Brown gave an oyster supper the night before. Nice man, Mr. Brown. Oyster supper and champagne. Asked me to the supper. Nice man, Mr. Brown. Went to the supper, and drank his champagne. Very nice man, Mr. Brown — (pause) — plucked him [that is, failed him] next morning.”³³

Colourful though he was, Mr. Gwynne does not seem to have made any attempt at changing the educational system. The initial examination of students, which determined whether or not they would be allowed to become students-at-law, still centered on the colonial version of classical studies. Typically an applicant would be asked to construe (translate and explain) an Ode from Horace and to demonstrate one of Euclid’s propositions. Second year students were also examined, however, and evidently questions of law were put to them. (It is recorded that one such student was asked to state under what circumstances money could be reclaimed when paid under a mistake of the law. The student “found himself at sea” and replied: “The only case of recovering money paid under error or ignorance of the law, with which I am acquainted will be the return of my fees by the Law Society if I do not pass this examination.”)³⁴

3: *Toward the Founding of the Law School*

It is apparent now, as it perhaps was not then, that by the middle of the nineteenth century legal education in Upper Canada (or Canada West as it was sometimes called) was in a rather anomalous state. The province had no law school nor did it have anything resembling or likely to become a law school. By even this early date Harvard and Yale had a quarter-century head start in the establishment of law as an academic discipline. Of course, Canada (and, it must be admitted, most of the United States), was following the English tradition of training in the law through articling to a practitioner. The problem was that in the colonies, and certainly in Canada West, the articling process was impeded by the primitive pre-legal education available to students and by the fact that the bar, on whose shoulders the real responsibility for training in the law rested, was, on the whole, unsophisticated.

Sporadic attempts were made to supplement practical training in law with formal and academic lectures from 1848 on. The 1848 effort involved a short series of lectures on law given by Chancellor Blake at King’s College.³⁵ The experiment was evidently not repeated.

A new attempt was made in 1854. In that and the following year the Law Society and Trinity College arranged to have occasional lectures delivered at Osgoode Hall by Messrs. Hagarty, J. Hillyard Cameron and Phillip Van Koughnet. Those who attended these lectures and then passed an examination at Trinity College, received the degree of B.C.L.³⁶

³³ *Id.*, 31.

³⁴ *Id.*, 28.

³⁵ Gillis, *supra*, note 16.

³⁶ J. C. HAMILTON, *supra*, note 17, at 12.

In 1855 Convocation reviewed the whole area of legal education and made some important regulations on the matter. New examination criteria were established for both the admission examination and the legal examinations. The Toronto *Daily Colonist* commented on the new rules in the same year, and one passage of its report (which was reproduced by the *Upper Canada Law Journal*) described both the new and the old systems:

"Formerly there were no particular books prescribed as necessary to be read by a candidate before examination. He was examined in the different branches of the law, and his knowledge tasked, no matter from what source derived. Some examinations were comparatively simple; there was no true test of legal knowledge — many passed without more knowledge of law than absolutely necessary, and perhaps, fortuitously sufficient to pass them; thus many, though not sound lawyers, might succeed in attaining a call. To meet this evil, or with some such view, the new rules have been passed; they were passed during last Hilary Term. These rules name certain books necessary to be read by all applicants for call; in addition to these books there are other books to be read by applicants for call with honours. In this respect the Benchers have not acted without precedent. In many universities, we might say in all universities, there is a classification of prizemen. . . . The Law Society, to encourage aspirants to the Bar to noble efforts, have introduced the class for honours. A candidate may elect the class through which he proposes to receive his call. It is optional".³⁷

The admission examinations continued to be based on the classics but under the new rules the range of subject matter was broadened to include a play of Euripides, 12 books of the Iliad, Horace, Salust, Euclid or Legendre, Hind's Algebra, Trigonometry, Statics and Dynamics, Astronomy, Moral Philosophy, Logic and Rhetoric and such works in ancient and modern history as the candidate might have read.³⁸ The law examinations were based on specific books with which the student-at-law was expected to have familiarized himself during his period of training. The examinations for call to the Bar in Easter Term of 1858 included questions from, among others, Storey's *Equity Jurisprudence*, Williams on *Real Property*, Blackstone's *Commentaries* — Vol. 1, and Taylor on *Evidence*. The questions asked were, for the most part, straightforward and demanded only a comment on the law as it stood. A student who had read Byles on *Bills* was expected to know whether "Payment of a bill at maturity by any person except the acceptor destroys its negotiability?" (There were six other similar questions); one who had studied Blackstone had to answer the query: "What is treasure trove and to whom does it belong?", and five other questions. The rare problem question was equally straightforward:

"A., tenant for life, with remainder to B in tail, with remainder over to C in fee, can B in any and what manner bar his own issue and the remainder in fee so as to convert his estate tail into an absolute estate in fee? Can he bar his issue without barring the remainder?"

(From the paper on Williams on *Real Property*)³⁹

Convocation's 1855 reconsideration of legal education also led to a much more significant reform. As part of the same reorganization

³⁷ (1855) 1 UPPER CANADA LAW JOURNAL, 216.

³⁸ *Id.*, 120.

³⁹ (1859) 5 U. CAN. L.J. 30.

a series of compulsory lectures were set up at Osgoode Hall. The lectures were to be attended by students who were "Keeping Term" in the Courts at Toronto (presumably students in outlying areas were not bound to attend). The lectures were delivered in the morning from 9 to 10 o'clock before the courts were in session and were evidently rather limited in scope. The compulsory lecture series scheduled for the first term was given by Adam Wilson, K.C., and was on the subject of "The Law of Landlord and Tenant".⁴⁰

Happily, the Law Society's new found interest in academic pursuits did not end with the lectures. In 1861, in order to encourage further excellence, the Society instituted the first of their scholarship programs. The scholarships available were to be £30 to a student in his first year; £40 to those in their second; £50 to those in third; and £60 to those in the fourth and final year. It was provided that the awards would be made on the basis of performance in special examinations based on textual materials and that the "cases of rich and poor were to stand equally".⁴¹

In 1862 the lectures developed to their logical conclusion with the establishment of the first law school at Osgoode Hall. In that year an order was made as follows:

"(1) That there be established a school of law to have its seat at Osgoode Hall, and to be designated the Law School of Osgoode Hall. (2) That the tuition of pupils attending such Law School be by means of lectures, readings and mootings, and otherwise, as may from time to time be prescribed by the rules and regulations of the Committee on Legal Education. (3) That the tuition of pupils be conducted by four lecturers of the Degree of Barristers-at-Law to be designated respectively the Reader on Common Law, the Reader on Equity, the Reader on Commercial Law, and the Reader on the Law of Real Property. Such Readers to be elected annually and to be paid a yearly salary of £150."⁴²

The order further increased compulsory lectures from one to two daily, and established non-compulsory lectures for three courses of six weeks each, called "Educational Terms", during which the Readers lectured on "a subject of legal science".⁴³

Throughout these years the distinction between solicitors and barristers retained some importance with regard to the educational standard required of applicants for the different sides of the bar. Neophyte solicitors were "articled clerks", while barristers-to-be were "students-at-law". The former were potential attorneys and had been governed since 1822 by the legislature of the province rather than by

⁴⁰ (1855) 1 U. CAN. L.J. 120.

⁴¹ (1861) 7 U. CAN. L.J. 140.

⁴² Gillis, *supra*, note 16.

⁴³ Also appearing in 1862 was what might be called an ancestor of the "printed notes". The UPPER CANADA LAW JOURNAL reviewed a new book entitled: "OSGOODE HALL EXAMINATION QUESTIONS, GIVEN AT THE EXAMINATIONS FOR CALL WITH AND WITHOUT HONOURS, AND FOR CERTIFICATES OF FITNESS, WITH CONCISE ANSWERS, AND THE STUDENT'S GUIDE; A COLLECTION OF DIRECTIONS AND FORMS FOR THE USE OF STUDENTS-AT-LAW AND ARTICLED CLERKS". by Calvin Brown and Edward Morion Chadwick, Students-at-law (Toronto: published by Rolls & Adam, Law booksellers). The JOURNAL recommended it to students at the price of \$2.00: (1862) 7. U.C.L.J. 140.

the Law Society (which since the same year had had sole governance of students-at-law). Generally there was no preliminary examination to be passed by the clerks nor were they faced with the rigours of examinations for a Call to the Bar at the end of their five years of study. The editor of the *Upper Canada Law Journal* noted the anomaly patent in the system: "The barrister must have *proved* his fitness . . . the fitness of the attorney is presumed; an inconsistency too palpable to require much enlargement".⁴⁴ The inconsistencies were gradually being removed, however. By an 1850 Act (20 Vict. c. 63 (Can.)), the Law Society regained some control over the clerks and was made responsible to examine candidates for the office of attorney or solicitor. After this it was only on presentation of a certificate of fitness from the Law Society that a Judge could admit one as a solicitor. The distinction between barristers and solicitors was rapidly becoming a mere formality: a student-at-law did not have to spend time under "articles" as his brethren the clerks did, but he was required to put in five years of unarticled "service" before his call to the bar. Furthermore the Benchers had declared that the aspiring barristers had to write all the same examinations as were required of clerks. By the latter half of the century it had become common practice to pursue both courses concurrently; inevitably the 'split' in the bar was being healed.⁴⁶

The elements of the law student's life in the brief period during which the first Law School functioned included "Keeping Term", which consisted of attending and taking notes on cases argued in the Courts, and attending the morning lectures in the examination room of the East Wing. The lecturers were Edward Blake, Adam Crooks, J. T. Anderson and Alexander Leith. Mr. Anderson was noted for giving point to his lectures by using Latin quotations "which were always received with thundering applause".⁴⁷ In 1863 several students included in their extra-curricular activities battles with the Fenian Raiders who had invaded the Niagara Peninsula.⁴⁸ Unfortunately, the less exotic student diversions have escaped the notice of the historians.

In 1868 Mr. Gwynne, who was still Secretary, was able to report that the Law Society had by that time called its 1,057th Barrister and admitted its 2,062nd student.⁴⁹ Oddly enough, in view of the growing number of students, in that same year the Law Society announced the closing of the Law School. A terse report in the *Canada Law Journal* stated that the lectures in term would be discontinued. The ostensible reason given was that the school and lectures were found to be uneconomic. A new system of holding more

⁴⁴ (1856) 2 U. CAN. L.J. 49.

⁴⁵ Riddell, *supra*, note 7.

⁴⁶ (1871) 7 U. CAN. L.J. 229.

⁴⁷ Farewell, *The Student at Law in the Early Sixties*, (1915) 35 CAN. LAW TIMES 52.

⁴⁸ J. C. HAMILTON, *supra*, note 17 at 113.

⁴⁹ *Id.*, 140.

examinations of law students was to be followed, and it was suggested that this system would more than make up for the lack of a school.⁵⁰

By this time, the state of legal education was such that few students knew exactly what was expected of them, and young men prayerful of admission were at a loss. The editors of the *Canada Law Journal* apparently received a sufficiently large number of inquiries about these requirements to prompt research and a report, for such a report appeared in the 1871 volume, prefaced with an ironic and caustic comment that in fact all this information was quite accessible to anyone who would take the trouble to look at the law in the Consolidated Statutes of Upper Canada, chapters 34 and 35, as amended by 23 Vict., cc. 47 & 48; 28 Vict., c. 21; 29 Vict., c. 29; 29-30 Vict., c. 49; 31 Vict., c. 23 (Ont.); and 32 Vict., c. 19 (Ont.). The article, entitled "How to Become a Lawyer in Ontario"⁵¹ went on to spell out the whole procedure. The rules, as reviewed, provided for a period of study of five years prior to call, but reduced to three where the student had already obtained a degree from a University.

Anyone who would embark on such a course would have been a minimum of 16 years of age. He would pay a fee of 5s. on giving notice of his intent, then article himself to a practising attorney or solicitor, and file the articles with the Law Society within three months of the notice. If he wished to become a student-at-law, he would present himself (and \$46) to the Secretary at Osgoode Hall to write the preliminary examination—"with the first and third books of the Odes of Horace and the first three books of Euclid at his finger-end,—figuratively, of course, for no literal contact, with the latter at least, will be permitted." "If he intends to 'go-up' in the Senior or University Class, he must also read the first book of the Iliad; and if this and the Horace are prepared as they should be, he need not (with deference to the dread tribunal be it spoken)⁵² feel any intense anxiety as to his mathematical attainments." Once he had passed the preliminary examination, the candidate should, if a "three-year man", prepare directly for the first intermediate examination which was written in the third year by a "five-year man" or in the first year of the shortened course of the University graduate. One year later, the second intermediate was written, and at the end, the examinations for call or admission were written. It was noted that the periods of time were set by statute and applied to articulated clerks only; they might be shortened for students-at-law if the Benchers so directed.

Five years after the closing of the first Law School a second and equally short-lived attempt was made at formalizing legal education. In Hilary Term of 1873 the Law School of Ontario at Osgoode Hall was opened. The principal movers behind the re-establishment of the

⁵⁰ 4 CAN. LAW JOURNAL 134.

⁵¹ (1871) CAN. L.J. 229.

⁵² This is probably a reference to the fact that Mr. H. N. Gwynne was, at the time, in his 31st year as examiner.

school had been John Hillyard Cameron, Q.C., and Chief Justice Thomas Moss.⁵³ Cameron was called upon to give the inaugural address at the opening of the School and in it he admonished his audience that there were three things to "ever keep before them: they were—System, Perseverance, and Self-denial; and they might be certain that if they kept those before them, they might be sure they would never fail when they entered upon their professional careers."⁵⁴ He was also reported to have alluded to the special need of a general knowledge of anatomy and bookkeeping.⁵⁵

The school had opened with over one hundred students in attendance and it ran until Easter Term of 1878.⁵⁶ The new Law School's faculty was made up of four lecturers: Alexander Leith, Q.C., who was also President of the School; Joseph Bethune; Z. A. Lash and Charles Moss. The subjects were Real Property, General Jurisprudence, Commercial and Criminal Law, and Equity. The course was six months long and was divided into two classes, Junior and Senior. The Junior class included all clerks and students, the Senior was open only to those who had either completed the Junior class, or had spent two years as students or clerks. The method of teaching included lectures, moot courts, and examinations. Attendance was voluntary.⁵⁷

The students of this second Law School left at least one legacy from which all who have followed in their path have benefited. In 1876 the Osgoode Hall Literary and Legal Society was founded with the objects of promoting the study of law, cultivating public speaking and reading, and encouraging the writing of essays.⁵⁸ The new society provided a forum for almost all concerted action of the junior Toronto bar and the law student body. One writer recalled its early activities in the following words:

"The young members passed many lively, interesting and instructive evenings together. . . . The debates covered a variety of subjects. Mock trials sometimes took their place. Interludes were filled with an account of a canoe trip on the Miramichi or in Algonquin Park, a discussion of the Henry George theory, the Monroe doctrine on Reciprocity, an essay or a song. The Glee Club rendered Halli Hallo or Solomon Levi, with instrumental accompaniment and chorus of members.

"There were public occasions when Osgoode invited friends and had its gay At-Homes. A team from Varsity or Trinity contested in debate with chosen members of this Society. There were also songs, music and recitations by noted artists. The second part of the program was reserved for waltzes, lancers and polkas, when 'all went merry as a marriage bell.'"⁵⁹

This convivial group was destined for greater responsibilities. At the end of the 1877-1878 term the Law Society announced the closing

⁵³ Gillis, *supra*, note 16.

⁵⁴ (1873), 9 CAN. L.J. 105.

⁵⁵ *Id.*

⁵⁶ Gillis, *supra*, note 16.

⁵⁷ (1873) CAN. L.J. 4.

⁵⁸ (1906) 5 CAN. L.R. 122-4. By its 30th anniversary the words of the Society's name had become transposed and read "Osgoode Legal and Literary Society". The name went through several later changes: the society was sometimes referred to as "Legal and Athletic" and "Literary and Athletic".

⁵⁹ J. C. HAMILTON, *supra*, note 17, at 185.

of the School⁶⁰ and at the same time rejected a motion to have the School affiliated with the University of Toronto.⁶¹ The Literary and Legal Society moved to fill the educational vacuum. The Society not only sponsored a series of lectures delivered by leading barristers, but also conducted examinations.⁶² This *ad hoc* educational programme continued until the Law School was again re-established. In 1881 it was noted that the series of lectures arranged by the student society over the previous winter term had resulted in attendance far beyond the capacity of the examination room at Osgoode Hall.⁶³

The demise of the second Law School brought protest and action from other quarters. Two of the lecturers who had been at the school for a short time before it closed, continued their lectures in spite of the closing. In 1879 the *Canada Law Journal* reported that Mr. Ewart had recommended to students his useful Saturday evening lectures in Chancery Practice and that Mr. Delamere had undertaken to give a similar series on Common Law Practice.⁶⁴

The reasons for the 1878 closing are unclear. One commenator suggested that this unfortunate move was caused by the fact that the lecturers were underpaid and did not prepare their lectures with care. A further reason was that the lectures had not been well received by the students who were at school and by that time worn out by their previous day's work. This gentleman's rather far-sighted solution was to establish a full-time Law School.⁶⁵ A more generally accepted, and far more probable, explanation (though one which the aforementioned writer specifically refuted) was that the lectures were so far from being poorly accepted that the school failed because of its "excessive" popularity. By attending lectures and passing examinations in Toronto law students from throughout the province could cut their term of service by six to eighteen months. This advantage drew students to the city and left understaffed the law offices of the countryside. Under the circumstances, the School was bitterly opposed by out of town barristers and Benchers.⁶⁶ Expense does not seem to have been a factor in this second closing and it is entirely possible that the hostility of the non-Toronto bar may have played a considerable role in the ending of the first School also.

The actions of the Law Society in these years were not going unnoticed. Indeed, the late 1870s seem to have been a period of genuine controversy over legal education in Ontario. Even while the Law School was functioning it did not escape criticism. One perceptive writer, Mr. Lester Lelan, levelled a charge against the educational process which would remain valid for decades thereafter. In

⁶⁰ (1878), 14 CAN. L.J. 69.

⁶¹ Davin and Goreham, *No Law School*, (Jan.-June 1880) 4 CANADIAN MONTHLY 119 et seq.

⁶² Gillis, *supra*, note 16, at 106.

⁶³ (1881) 17 CAN. L.J. 111.

⁶⁴ (1879) 15 CAN. L.J. 325.

⁶⁵ (1880) 16 CAN. L.J. 119.

⁶⁶ Gillis, *supra*, note 16.

his opinion the Law School was not broad enough in its approach to the discipline and paid too little attention to subjects like jurisprudence.

"If our rising generation of law students would find time to study the history and science of law; if our Law Society would give those subjects a place in their regular course, our future lawyers would be less open to charges of narrowness, empiricism and over-conservatism."

Mr. Lelan drew an analogy of equally far reaching application; in his eyes the obstructionist attitude of the profession towards reform was comparable to the destruction of Hargreave's Spinning Jennies by terrified workmen.⁶⁷

The 1880 issues of the *Canadian Monthly* became a forum for two outspoken critics of the Benchers, Nicholas Flood Davin and Thomas A. Goreham. In "No Law School",⁶⁸ Goreham wrote of the trials of law students who had to grope and struggle with the "mysteries and intricacies of the practice of the law . . . feeling the want of someone to level and render less rocky his road." He suggested that it would be small wonder if a student who studied on his own for five years would "content himself with a knowledge of practice and become a sharp attorney, and a mere case-mongering barrister." He attacked the Province of Ontario for being at a standstill in the study of law, while the U.S. law schools turned out "men who guide half the councils of the world". He deplored the refusal of the Law Society in 1878 to pass the motion which would affiliate the Law School with the University of Toronto, and noted that though the wealth of the Law Society was the result of students' fees (which each year amounted to almost one-half of the Society's revenues), the Society had seen fit to provide no instruction in return. Goreham concluded thus:

"Let the students who are junior members, and who are contributing to the standing of this wealthy society, demand, in tones not to be misunderstood, a method of instruction founded on correct principles and with the design of instructing them in the art as well as the science of the law; of fitting them to enter at once upon the successful practice of the profession; a course of instruction which will qualify them to take a position in the councils of their country and enable them to contend not unworthily at the diplomatic board with their rivals. Let them demand that which they are to be the exponents of — justice."

Davin wrote "Legal Education"⁶⁹ as a sequel to "No Law School", and suggested that the fact that such an article should be written at all was conclusive evidence that something was wrong. He referred to the actions of the Law Society as short-sighted, selfish, ignoble—"Their attitude is as false to ancient legal tradition as to the modern spirit". Where a few years before there had been the beginnings of a law school, there was nothing—"Local jealousy, whose ideal of a State is a prairie without tree or hillock, where there is nothing to qualify the howling waste of monotonous equality, took the alarm".

⁶⁷ Lelan, *Law and the Study of Law*, (Jan.-June, 1878) CANADIAN MONTHLY 190.

⁶⁸ Davin and Goreham, *supra*, note 61.

⁶⁹ Davin, (Jan.-June 1880) 4 CANADIAN MONTHLY 287.

He accused unnamed City Benchers of being weak in allowing the county Benchers to indulge their selfish desire to kill the whole law school programme in order to maintain their equality—"In a fit of rampant localism they stabbed the young institution." Davin countered the argument put forward that no suitable lecturers could be found by saying that all that is needed is "a surveyor who has been over the ground . . . a finger-post is more desirable than a philosopher."

Soon the law students themselves joined the fray. They petitioned the Benchers to re-establish the school and presented Goreham's argument (that despite the fact that they, the students, contributed almost one-half of the Society's revenues, they were left at an educational disadvantage vis-à-vis other professions) in support of their case.

Goreham reported this petition in an article entitled "The Law Student's Grievance"⁷⁰ and then went on to comment on the system of legal training as it stood. In his view the typical "five year man" spent his first two years "engaged in learning where the clients of his principal live, or, if he be of sedentary habits, in learning to copy all the letters in a big round hand . . . reducing to legibility some legal scrawl." As for the "three-year men", he says that when they began to read law, meeting terms and phrases which had long since changed to a special meaning, they would give anything for a lecturer.

The editor of the *Canada Law Journal* raised a telling point: "Has it ever been suggested," he asked, "that of all courses of study, that of law stands out so pre-eminently easy that no . . . assistance in it is requisite?"⁷¹

As a result of the continuing pressure, the Benchers passed a rule in Michaelmas Term of 1881 for the establishment (for the third time in twenty years) of a Law School. Curiously enough the Benchers' order enshrined the impermanence that had plagued the previous schools: it authorized the operation of the School for two years only. The new School was to be essentially the same as that run in the past decade. Attendance was not compulsory nor did its course of studies seem particularly arduous. The "Chairman" of the new School was Mr. Thomas Hodgins, who opened the session of 1881-1882 with a lecture on Constitutional Law. He delivered a total of seven lectures on that subject to members of the Senior class, with attendance averaging 34; and eight lectures on Criminal Law to the Junior class, average attendance for those being 15. Mr. McDougall lectured to Seniors on Negligence, and to Juniors on Bills and Promissory Notes. Mr. Delamere lectured Seniors on Partnership and Juniors on Practice under the Ontario Judicature Act. Mr. Armour lectured to Seniors on History and Growth of Real Property Law and to Juniors on Married Women's Property Rights.

It had evidently been intended at one point that the instruction given by the regular lecturers would be supplemented by lectures on

⁷⁰ *Id.*, 531.

⁷¹ (1881) 17 CAN. L.J. 111.

special subjects to be delivered by Benchers and other eminent practitioners. This plan was never put into effect, however, and the Editor of the *Canadian Law Times* was moved to comment in later years that "in the many years during which lectures have been delivered at Osgoode Hall no one Bencher or other member of the profession, except the paid lecturers, has ever delivered a single lecture, or appeared at a lecture delivered, or in any way manifested the slightest interest in the welfare of the School."⁷²

At the close of the session Mr. Hodgins reported to Convocation that attendance had been irregular and unsatisfactory—in fact, disappointing. However, he indicated readiness to continue the School for the second proposed term. The students who did attend valued the School and, anxious perhaps that another closing not be laid to their charge they indicated their appreciation in a letter to the *Canada Law Journal*. In the same letter they requested that the Law Society add to and update the twenty-five volume student library.⁷³

In Convocation, on June 1, 1883, and each year thereafter until 1888, the Benchers voted to continue the School one year at a time. Little was said about the matter until 1888 when, as a result of a proposal from the University of Toronto that the Law Society and University collaborate in the operation of a Law Faculty,⁷⁴ the Minutes of Convocation and the Journals show a great increase in interest in legal education reform. In that year, mounting pressure from the profession, students and other educational institutions in the province led the Benchers to establish a Special Committee on Legal Education.

The Special Committee met for the first time on the 30th April, 1888, to consider the University of Toronto's offer to establish a Law Faculty. The conclusions of the Committee, which were presented to Convocation at the meeting of December 14th, 1888, set the direction of legal education in Ontario for the next sixty years. The Committee decided that, "It is not at present desirable to enter into any arrangement with any University for the joint education of students, nor to shorten the period of study or service of students; and that it is expedient to reorganize the Law School with a sufficient staff of lecturers under a President, with compulsory attendance by students."⁷⁵

The Committee also recommended that consideration of delivering lectures at places other than Toronto should be deferred and that

⁷² (1889) 9 CAN. L.J. 41.

⁷³ (1882) 18 CAN. L.J. 427.

⁷⁴ This was a proposal adopted by a joint committee of the Law Society and the Senate of the University of Toronto. The plan was that students should begin their legal studies with two years of lectures on law given by the University. The students' following two years would be spent under articles with practical instruction being given at the Law Society's school. The Editor of the *CANADA LAW TIMES* condemned the proposal as giving students half of a University course and half of a legal course, both halves being defective. See (1888) 8 CAN. L.J. 69.

⁷⁵ Gillis, *supra*, note 16.

no person should be called to the Bar unless he had articulated for three years subsequent to graduation from a university, or five years otherwise. The Committee took note of the fact that in 1888 there were 580 students on the books of the Society, of which 150 were university graduates. Perhaps in token of this rise in educational standards the Committee suggested that the primary examinations for entrance into the study of law be abandoned and that the establishment of a requirement of proof of completion of a prerequisite course of study be substituted. The report of the Committee was adopted by the Benchers in Convocation on the 4th January, 1899; the way was clear for the establishment of a permanent Law School.

CHAPTER II: THE YOUNG LAW SCHOOL

1: *William Albert Reeve, 1889-1894: The First False Dawn*

The repeated failures of the Law Society's earlier attempts to establish a Law School demand some analysis. Even though the 1889 Law School proved to be permanent, its history was shaped and even warped by the difficulties which had proven fatal to the earlier Schools.

Admittedly, all of the Nineteenth Century Ontario attempts to teach law were somewhat unfortunate in the class of student which they were intended to serve. At a time when the preliminary education of a student-at-law might include anything from primitive tutelage in the bare essentials required by the Society to a University degree, it was impossible for any school to serve all needs. Furthermore, the students seem to have supported the various schools with varying degrees of enthusiasm. As we have seen, the students who did attend lectures were frequent and public in their expressions of appreciation of the school and in their demands for educational reform. Over the years, however, the average attendance at the non-compulsory lectures was not more than five per cent (by one estimate) of the students-at-law of the province.¹

On the other hand, the Law Society had been less than generous in its treatment of the students of the Schools. The charge that the Society milked the students of fees and then gave little or nothing in return, had some validity. It was reported in 1888 that students annually contributed nineteen to twenty thousand dollars in fees to the Society while the Society spent about eight hundred dollars a year on instruction.² The pitifully inadequate twenty-five volume student library has already been mentioned. What was not mentioned was the fact that if a student wished to borrow books from the library at Osgoode, he had to furnish a certificate that he was a "fit and proper person to receive books" and, furthermore, he had to lay out a ten dollar deposit as security. Having gone through all that, he could still borrow only one book at a time.³

The failures of the Law Schools cannot be laid solely to the inadequacies of the students. The basic problem lay with the Law Society and its out-dated view of training in the practice of law. For the Society the School was, at best, a rather extraordinary supplement to the real process of legal education which was going on in law offices throughout the province. The School was therefore at all times administered so as to impinge to the smallest degree possible on the service and articling processes. It is not surprising that a school so restricted was also in the smallest degree possible academically useful.

¹ (1888) 24 CANADA LAW JOURNAL 419 et seq.

² (1888) 8 CANADIAN LAW TIMES 69-71.

³ (1888) 24 CAN. L.T. 317.

What is, perhaps, surprising is that the Law Society does not seem to have recognized that the limitations and faults of office training as a process of legal education were growing more serious all the time. By the 1890s, the withering of the split bar in Ontario was almost complete. The first Calendar of the reorganized Law School continued to distinguish between articled clerks and students-at-law, but the distinction was of little practical importance. The student paid fifty dollars on admission to the Society and the clerk paid forty. The clerk, however, could raise his status to that of student at any time during his period of articles simply by paying another ten dollars.⁴ The clerk bound himself to a solicitor but his period of service was exactly as long as that of a student and he ceased to be bound by his articles if he became a student-at-law.⁵

When the distinction between barristers and solicitors was lost some of the rationale of the service and articling processes was also lost. In England, whence both the split bar and the articling system had sprung and where both still flourished, the profession of barrister was traditionally an upper class occupation pursued not so much for gain as out of *noblesse oblige*. The English barrister then, as befitted his social status, was usually a university graduate and on his greater breadth of knowledge the progressive thrust of the law depended. The Ontario bar had outgrown both the social and professional justifications for the English system of legal training. The Law Society's insistence on preserving the system in spite of its obsolescence threatened to ensconce ignorance as the hallmark of the profession.

In addition to these problems, a serious threat to the validity of office training as a method of legal education was being presented by technological change. Service under a practising barrister or solicitor could be supremely useful when all letters and documents were engrossed by hand and all messages were delivered in person. Under such circumstances the "apprentice" would gain at least a working knowledge of the tools of his trade. Inevitably, however, the telephone, typewriter and stenographer altered the role of the legal clerk and made his duties ever more menial. He was left in a limbo where he lacked the training to participate in either research

⁴ THE LAW SOCIETY OF UPPER CANADA, CURRICULUM OF THE LAW SCHOOL, 1891 (Toronto 1891) 20.

⁵ *Id.*, 20 and 48.

The "Articles of Clerkship" were in the form of a contract between the student and his parents and the Solicitor in question. The contract, as set out in the 1891 Calendar at page 48, included the following provisions (*inter alia*):

"[T]hat the said [student] of his own free will (and with the consent and approbation of the said [parent], testified by his execution of these presents), hath placed and bound himself, and by these presents doth place and bind himself, clerk to the said [Solicitor], to serve him. . . ."

"And the said [clerk] doth hereby for himself, his heirs, executors and administrators, covenant with the said [Solicitor], his executors, administrators and assigns that the said [clerk] shall and will well, faithfully and diligently serve the said [Solicitor] as his clerk. . . ."

The clerk also bound himself not to embezzle the Solicitor's money, to pay for damage caused, to keep the secrets of the Solicitor and his partners and to "readily and cheerfully obey and execute his . . . lawful and reasonable commands".

or practice. As the profession modernized itself this problem could only become more critical.

There were factors other than this unfortunate dependence on the articling system that made it difficult for the Law Society to run a successful Law School. As has been shown, the early attempts to formalize legal education were vulnerable to the hostility and "rampant parochialism" of the rural bar and to what must surely have been specious considerations of economy. At the heart of the matter lay the fact that the profession, having itself been trained in legal practice, found it difficult to appreciate the claims that Law had to being an academic discipline. Then, of course, there was the problem that as long as the school was simply one element in the Law Society's process of admission to the bar it had to gear itself, at least in theory, to the lowest common qualifications of Ontario students-at-law. Similarly, if the School was to be seen as serving all the law students of the province its inability to attract more than a tiny fraction of those students could be seen as a sign of failure on its part.

The obvious remedy for all of these difficulties would have been to have had a course of legal studies established by a university. The university could then set its admission standards and teach its subjects as it pleased; the number of students attending would be irrelevant. Such a solution, however, (as the University of Toronto had repeatedly been made aware) was impossible, or at least highly impractical, until the Law Society gave some concrete recognition to the academic legal studies offered. No substantial course in law could survive for long if the Law Society persisted in regarding it as an irrelevant preliminary to the Society's own rigid requirements with regard to admission to the Bar.

It should be remembered that by the time Ontario received a permanent Law School in 1889, the United States could claim well over fifty years' experience in the academic study of law. The Law School at Harvard (which was not the earliest in the nation) was founded in 1817; legal studies began at Yale in 1824.⁶ The context in which these law schools were founded and grew has some interesting features. Originally in the United States, as in Ontario, admission to the bar was controlled by the barristers themselves. The profession, however, became ingrown and cliquish, and during the fervently democratic period after Andrew Jackson attained the Presidency the bar was almost literally thrown open to the masses. Under these circumstances, when academic legal studies were simply one of several equally convenient avenues to the practice of law, the law schools flourished. As could be expected, the graduates of the great schools stood out to such effect among their generally more mediocre colleagues that the university law faculties were crowned with prestige and crowded with students. These graduates were the men who "guided

⁶ Reeve, *Inaugural Address to The Law School*, (1889) 9 C.L.T. 242.

half the councils of the world", a point which, as we have seen, was not entirely lost on Ontario observers.⁷

Perhaps then, the difficult situation in which Ontario legal education found itself was attributable not so much to the students or to the Law Society as to the Legislature. It was the Act of 1822 by which the Law Society was given its broad powers that was the barrier to reform.

* * * *

The formal resolution implementing the Special Committee on Legal Education's recommendations on the reorganization of the law school was passed by the Benchers on February 15th, 1889. The School was continued independently of any university and without any shortening of the period of service or articling demanded of students. Students were compelled to attend lectures if they were entitled to take the first or second intermediate examinations before Michaelmas Term 1890. The School's examinations in May, if passed, would stand in lieu of the Law Society examination. The Law Society discontinued its entrance examinations for students but its confidence in the provincial secondary schools was not unbounded: the new School's Calendars set out in considerable detail the course of studies which matriculant applicants were expected to have completed.⁸

As an apparent appeasement to members of Convocation in favour of the establishment of a faculty of law at the University of Toronto, the Benchers were at this time willing to accept attendance at lectures in law given by any university in Ontario in lieu of attendance at the law school. This degree of recognition was provisional on the university course being similar to that given at the school. Whether any university could or would structure its studies so as to correspond to those offered by the Society was, perhaps, an uncertain point. The question did not become a practical issue, however, since, in fact, no university legal faculties existed. The University of Toronto did boast an ambitious plan for the institution of legal studies. A faculty of two paid professors and nine part-time lecturers was appointed and a wide range of subjects were scheduled to be taught. The roll of honorary lecturers read like a "Who's Who" of the Law Society of Upper Canada of the day;⁹ a fact that is

⁷ Davin and Goreham. *No Law School* (Jan.-June 1880) 4 CANADIAN MONTHLY 119-20.

⁸ L.S.U.C., *supra*, note 4.

⁹ (1888) 24 CAN. L.J. 609.

The paid professors were to be the Honourable Mr. Justice Proudfoot (Roman Law), and the Honourable Mr. David Mills, LL.B. (Constitutional and International Law). The honorary lecturers were: Hon. Mr. Justice MacMahon (Wrongs and their Remedies), Hon. Edward Blake, Q.C. (Constitutional Law), Hon. S. H. Blake, Q.C. (Ethics of Law), Mr. Dalton McCarthy, Q.C. (Civil Rights), Mr. W. R. Meredith, LL.B., Q.C. (Municipal Law), Mr. B. B. Osler, Q.C. (Criminal Jurisprudence), Mr. Z. A. Lash, Q.C. (Commercial and Maritime Law), Mr. Charles Moss, Q.C. (Equity Jurisprudence) and Mr. J. J. McLaren, LL.D., Q.C. (Comparative Jurisprudence of Ontario and Quebec).

somewhat surprising in view of the Society's previous opposition to the University's effort in the field of legal education. Only one of the paid professors (the Hon. David Mills) actually commenced his lectures and the whole project was later abandoned.

The Legal Education Committee of the Law Society was entrusted with the implementation of the February 15th resolution. The Committee wished to have the reorganized School in operation by the fall of 1889. Subjects and texts for the first year's operation were set up and it was decided that instruction would progress with a series of lectures on one subject, succeeded, when complete, with a series of lectures on another subject.

The Committee was also in charge of securing staff for the School. Convocation had appointed Mr. Justice Strong of the Supreme Court of Canada as Principal but he declined to act. After due consideration, William Albert Reeve, M.A., Q.C., who had for some years prior been the Society's lecturer in Criminal Law and Torts, was appointed in his stead.¹⁰ Two lecturers, A. H. Marsh and E. Douglas Armour, and two examiners, R. E. Kingsford and P. H. Drayton, were also named to the staff.¹¹

The Principal was the only full-time member of the school's staff. The lecturers were to combine their educational duties with their Toronto legal practices. The examiners were in charge of setting and marking the students' examination papers. In practice, the examination questions were undoubtedly set after close consultation with the lecturers, though in theory, the examiner was an agent of the Law Society, certifying the examinee's knowledge, and not a member of the law school staff testing the diligence of his study.

The Society was, perhaps, more fortunate than it realized in securing the services of Mr. Reeve. The editor of the *Canada Law Journal* voiced regret that a more experienced person had not been found,¹² but Mr. Reeve made up in the freshness of his vision for what he lacked in years of service. He was sent with two Benchers on a tour of the northeastern United States to study the organization and methods of the major law schools located there.¹³ No better introduction to his new studies could be imagined. The schools visited (which must have included Harvard, Yale and Columbia) were then, as now, in the forefront of legal education.

When the reorganized School opened on October 7th, 1889, the occasion was observed with a gathering of all the Benchers and students and a large number of the Profession in Convocation Hall. The platform was occupied by the Treasurer, Messrs. Irving, Moss,

¹⁰ (1889) 9 CAN. L.T. 162.

¹¹ *Id.* See also Gillis, *Legal Education in Ontario—An Historical Sketch*, (1904) 4 CANADA LAW REVIEW 197.

¹² (1889) 25 CAN. L.J. 359.

¹³ (1889) 9 CAN. L.R. 162.

The Benchers who accompanied Mr. Reeve were Edward Martin, Q.C., and the Hon. Charles Moss.

Martin and Lash (all Benchers) and the staff of the School. The Treasurer spoke briefly and then the new Principal presented his address. Mr. Reeve's inaugural speech, which was preserved and published in full,¹⁴ is in many ways a remarkable document. As a statement of the aims and purposes of legal education it deserved more attention than it seems to have been given. The points made by Mr. Reeve were just as valid and, in many cases, just as far from receiving full recognition fifty years later.

As might be expected, the speech contained the almost mandatory commendations of Blackstone's lectures and of the majesty of the Common Law. It also contained some sophisticated comments on the history of legal education in England and the United States, together with observations on recent developments in teaching methods in the latter country. The lessons of the recent tour had evidently not been lost.

The real burden of Mr. Reeve's remarks, however, centred on the value and necessity of academic studies in law. Knowing the disposition of his audience, he took his "text" from Blackstone:

"Making due allowance therefore for one or two shining exceptions, experience may teach us to foretell that a lawyer thus educated to the Bar in subservience to attorneys and solicitors will find he has begun at the wrong end. If practice be the whole he is taught, practice must also be the whole he will ever know; if he be misinstructed in the elements and first principles upon which the rule of practice is founded, the least variation from established precedents will totally distract and bewilder him; *ita lex scripta est* is the utmost his knowledge will arrive at; he must never aspire to form, and seldom expect to comprehend, any argument drawn *a priori* from the spirit of the laws, and the natural foundations of justice."¹⁵

The new Principal expanded on Blackstone with his own defence of Law as an academic as well as a professional discipline:

"Rightly considered there is no conflict between the educational functions of the office and those of the school. Both are necessary. Each is the complement of the other."¹⁶

However, office training alone might be insufficient:

"Thus far we have supposed the student's experience of cases to be mainly confined to those with which he has come in contact in the office, but imagine him if you please to be placed in our excellent library with leisure to ransack the volumes of reports with their thousands of cases there recorded, and how much better is he off? Hundreds of these cases turn upon special facts. Those which really exemplify important principles are few and far between, and the student, dazed and bewildered by the multiplicity of decisions with their fine distinctions depending upon complicated differences of fact, is apt in the confusion to lose sight entirely of the true principles which do lie hidden somewhere in the heterogeneous mass. Now, the remedy for all this is proper teaching, by which the reasoning faculties will be cultivated and allowed their due share in the matter by which the great fundamental principles of Law will be discussed until they are properly understood and so impressed upon the mind so as to be available for daily use through life, so that when the student or young lawyer when a new case is presented

¹⁴ Reeve, *supra*, note 6, at 241-255.

¹⁵ *Id.* 245.

¹⁶ *Id.* 243.

to him, instead of at once flying as a matter of course to the reports to search until he finds a case exactly similar to its facts, and considering it hopeless to do anything else until that is done, will first sit calmly down, and applying the test of general principles form some opinion of his own, not of course to take the place of authority, but to enable him to intelligently apply such authorities as he finds.¹⁷

"But another truth which is practically acknowledged everywhere, is that every science which needs a study of books to acquire it, needs also a teacher to assist the study, as witness our colleges and schools of theology, of medicine, of military and naval science, of technology, of the fine arts, of pharmacy, of agriculture. It would seem strange indeed if the profound and universal science of Law were the only one in which the student might safely be left to his books without a school.¹⁸

"In no other department of learning can the knowledge of fundamental principles be more important than in this."¹⁹

Mr. Reeve also made a few comments on the curriculum of the newly opened School. The study of Contracts was moved to the first year of the course because the book used was "from its popular style eminently suitable for beginners". Criminal Law was placed in the second year and Private International Law and the Construction and Operation of Statutes were both added to the course in third year.²⁰

The ideas put forward on the method of instruction also deserve notice. The traditional "Moot Courts" were to be used but a more striking innovation was also being considered.

"In some of the leading schools in the United States, recently visited, the lecture in the strict sense of the term is not the prominent feature which it once was. Speaking for myself, I am convinced that, as an every-day means of conveying instruction, there are more effective modes than the smooth unbroken delivery of lectures or essays upon legal subjects, valuable and desirable as those are upon occasion. If our law is founded upon reason, it is by the exercise of reason that we must hope to master it, and without at all undervaluing the aid of memory in gathering in stores of knowledge, in this as well as in other departments of learning, I attach the highest importance to the cultivation of the reasoning faculties. To be compelled to think is the paramount need of the student of law, and the oral examination by the lecturer of the student from day to day and the frequent discussions of questions by the students among themselves, together with constant explanations by the lecturers of points not fully understood, I believe are better methods of securing this object than a steady adherence to the plan of reading or delivering uninterrupted lectures, strictly so called, during which the student may think as much or as little as he pleases."²¹

These remarks are an unmistakable reference to the "case method" of instruction then being developed and refined at Harvard and other schools. While Mr. Reeve may have understood the demands and rewards of "case method" teaching, it is not certain that his lecturers were as knowledgeable or as competent. One version of the Socratic dialogue mentioned by Mr. Reeve was that each lecturer would conduct a weekly oral examination to test the results of his efforts.²²

¹⁷ *Id.* 245-46.

¹⁸ *Id.* 246-47.

¹⁹ *Id.* 247.

²⁰ *Id.* 248.

²¹ *Id.* 252-53.

²² (1889) 9 CAN. L.T. 243.

The inaugural address was concluded with an enumeration of the advantages which the new Law School enjoyed. Chief among these was the use of the Law Society's Great Library. "To-day", said Mr. Reeve, "we have more books in Osgoode Hall—some thousands more I believe—than are at present contained in the library of the Harvard school."²³ He also allowed himself some perhaps incautious satisfaction as to the governance of the School:

"Nor is our school less fortunate in the constitution of its governing body. Many law schools are controlled by men entirely separated from the practice of the law, and in some instances not belonging to the legal profession at all. In ours, on the contrary, the government is in the hands of men engaged in active practice at the bar, capable of appreciating the needs of the student, and keenly alive to all that affects the interests and honour of the profession."²⁴

Succeeding decades were to demonstrate the rather mixed nature of this blessing.

* * * *

Despite its auspicious beginning, the few short years of Principal Reeve's administration were somewhat hesitant and uncertain in terms of the progress achieved. The School grew physically, as was inevitable, but its intellectual growth may not have been commensurate.

The first problem faced by the Law Society was to increase the facilities and accommodation for the enlarged student body. On September 21st, 1889 (before the School opened), Convocation approved proposals made by a Mr. Storm, an architect, for the alteration of the School's portion of Osgoode Hall and ordered that the alterations proceed.

In the following year more extensive plans were made. At the June Convocation of 1890, Mr. B. B. Osler, of the Legal Education Committee, gave notice of motion to authorize the construction of a School building on the grounds of Osgoode Hall containing lecture rooms, library, and rooms for the Principal and lecturers. The total cost was estimated to be about \$50,000. As a result of Mr. Osler's motion, a Law School Building Committee was constituted and it presented a report later in the year.²⁵ In June of 1891 the contract for the construction of the new law school was approved by Convocation²⁶ and the new building was completed during the fall of that year at a cost of over \$32,000.²⁷

Principal Reeve had suggested, while the new addition was being planned, that a name more appropriate than simply "the Law School"

²³ Reeve, *supra*, note 6, at 254-55.

²⁴ *Id.* 256.

²⁵ (1890) 10 CAN. L.T. 165.

²⁶ Law Society of Upper Canada, *Proceedings in Convocation* (hereinafter *P.C.*) 6 June 1891. The Proceedings in Convocation are gathered in the Great Library of Osgoode Hall. They are unpublished and, though bound, are variously paged. They can only be referred to by date.

²⁷ *P.C.* 29 Dec. 1891.

might fittingly be conferred on the building at its dedication.²⁸ Unfortunately it was fully thirty years before other Benchers and another Dean took up his suggestion.

Another addition to the School's teaching facilities in these years came through the founding of the Phillips-Stewart Student Library. In May, 1892, Convocation learned of the death of Mr. Thomas Brown Phillips-Stewart, a young barrister and sometime poet, who had been a member of the bar of Ontario for a very short while. Mr. Stewart, by his will, indicated his desire that part of his estate should go to the Law Society of Upper Canada for the purpose of establishing a student library at Osgoode Hall. Convocation would have been very pleased to accept this bequest, except for the fact that it had doubtful power to receive such a gift without enabling legislation. The whole matter was referred to the Legal Education Committee for inquiry. That Committee reported, in December, that the Law Society could not receive the bequest and that the property would have to pass to the residuary legatees unless a special Act were procured by the Benchers from the provincial legislators. Passage of the special Act was duly procured, and out of the estate of \$21,095 left by T. B. Phillips-Stewart, about \$8,000 was received by the Law Society of Upper Canada to endow the T. B. Phillips-Stewart Library.

Mr. Barwick, a Bencher of the Legal Education Committee, moved in Convocation that a tablet to commemorate the gift of Mr. Stewart be erected in the room which was to house the Library. The wording was decided upon as follows: "This tablet is erected by the Law Society of Upper Canada to the memory of T. B. Phillips-Stewart, Barrister-at-Law, who by his last will devoted his property to the advancement of education of students of Law."²⁹

The growth of the School's enrolment was encouraging. The Principal reported to Convocation at the close of the first year of operation that 136 students had been enrolled, of whom an average of 110 attended regularly. In 1891, tuition fees of students were raised from \$10 per year to \$25 per year. In spite of this increase enrolment stood at 197 (72 students in first year, 44 in second year and 81 in third year—note the rather odd distribution) at the close of the 1891-92 term. By the end of the 1893 term enrolment had risen to 250 students, but in the following session (1893-94), it dropped back to 234.³⁰

At least one addition to the School's student body deserves special mention. In the summer of 1891, the Legal Education Committee and the Benchers received their first petition from a girl wishing to enter on the study of law: Miss Clara Brett Martin petitioned to be admitted as a student. It was the submission of the Legal Education Committee to the Benchers that the Law Society of Upper Canada

²⁸ (1891) 11 CAN. L.T. 202.

²⁹ P.C. 16 May 1892; 9 Dec. 1892; 6 Feb. 1893.

³⁰ (1890) CAN. L.T. 165; P.C. 27 May 1892; May 1893, June 1894.

had no authority to admit women as members thereof. They recommended that the prayer of the petitioner be not granted. Miss Martin, however, must have been somewhat of a suffragette, for the Benchers had not heard the last of her.³¹

Her cause was again brought to the attention of the Law Society in September 1892, when the Benchers were called upon to consider a special Act of the Ontario legislature entitled "An Act to Provide for the Admission of Women to the Study and Practice of Law". The Benchers were less gallant than the legislators and their initial reaction was to pass a resolution that "The Convocation, being called upon by the application now before it to exercise the discretion vested in it by the Act 55 Vict. c. 32, is of opinion that it is inexpedient to frame rules for the admission of women to practice as solicitors." The Secretary was instructed to communicate the resolution to Miss Martin.³² The resolution was, however, short-lived, for later that fall a motion was put by Sir Oliver Mowat, K.C.M.G., the Attorney-General of Ontario, as a result of which the matter was referred to the Legal Education Committee with instructions to frame rules with respect to the admission of women to practice, and to report at the next meeting. The votes on the matter were, not surprisingly, very close. Toward the end of December, 1892, the Committee referred back to Convocation with draft rules. The rules were given three readings and carried. Miss Martin's troubles were over, for the time being at least.

The School's progress toward mature status as an institution of higher learning was less heartening. The problems which were to plague legal education for the next half century were already apparent. The School was administered by the Principal but was governed by the Legal Education Committee of the Law Society. The Committee was convinced of the efficacy of the articling system and made its rules accordingly. Lectures were arranged for morning and afternoon, beginning at 9.30 a.m. and 4.30 p.m. so as to leave the bulk of the day free for office work.

Despite the restriction, the number of lectures given increased steadily. In 1890, the Principal reported that 283 lectures (61 on Real Property; 81 on Equity; 61 on Contracts, and 80 on Common Law) had been delivered during the School's first session. Mr. Reeve proposed that in the future 240 lectures should be given to first year, 270 to second, and 270 to third year, for a total of 780 lectures. He planned that 60 of these lectures would be moot courts, 30 in each of second and third year.³³ In fact, his proposal was exceeded three years later. At the end of the 1893-94 term it was reported that 785 lectures had been given.³⁴

³¹ *P.C.* 6 June 1891.

³² *P.C.* 13 Sept. 1892.

³³ (1890) 10 *CAN. L.T.* 165.

³⁴ *P.C.* June 1894.

The increase in lectures was so great that the editor of the *Canadian Law Times* was moved to suggest that an excessive burden was being placed on students. In 1893 he found that each student was receiving an average of 229 lectures per session. His comment: "It requires very little intelligence to see that this is too much for [a student] to assimilate. It resembles more the process of stuffing sausages than administering mental food in nutritious quantities."³⁵

The Legal Education Committee also controlled appointments to the staff of the School. This matter was handled in a curiously inefficient manner. Lecturers were appointed for one year periods only and at the end of the year new applications for the post were received. Fortunately for the School, the practice soon developed of appointing the incumbent lecturers almost automatically. Naturally the School's staff needs increased as enrolment grew. After only one year's operation Mr. Reeve found it necessary to suggest that the two examiners, Messrs. Kingsford and Drayton, be made lecturers. The Legal Education Committee accepted the suggestion and the part-time staff was increased to four.³⁶ In 1893 John King, Q.C., and McGregor Young were substituted for Kingsford and Drayton and the number of examiners was increased to four. At the same time the Law Society put its full confidence in the examinations that were linked to the School's lectures and abolished the second intermediate examinations and the examination for the certificate of fitness and call to the Bar which had hitherto been administered separately.³⁷

The influence of the Legal Education Committee went even beyond the appointment of staff and the regulation of lectures. The curriculum taught and the texts used were also its responsibility. When the Committee set up the reorganized School, it thought not so much in terms of subjects taught as of books studied. Students enrolled in the School's first session were responsible for, and examined upon, Smith on *Contracts*, Anson on *Contracts*, Leith Williams' *Real Property*, Broom's *Common Law*, Kerr's *Student's Blackstone*, Snell's *Principles of Equity*, and such Acts or parts of Acts as were assigned by the Principal.³⁸ Implicitly the Committee did not conceive of the Law School as being a form of education qualitatively different from the legal training already demanded of students all over the province. Small and belated recognition of the School's unique role came only in 1893 when it was ruled that henceforth students were to be examined on lecture materials as well as texts.³⁹

The curriculum of 1893 is set out in the Law Society's Calendar of that year. The subjects taught were the same as those outlined for

³⁵ (1893) 13 CAN. L.T. 153.

³⁶ (1890) 10 CAN. L.T. 165.

³⁷ (1893) 29 CAN. L.J. 423, 545. The examiners appointed in 1893 were Messrs. A. C. Galt, B.A., W. D. Gwynne, B.A., M. H. Ludwig, LL.B. and J. H. Moss, B.A.

³⁸ (1889) 9 CAN. L.T. 234.

³⁹ "Historicus", *The Ontario Law School*. (Mar.-Oct. 1893) 1 *The Canadian Magazine* 699.

1891 and 1892 and indeed there were very few significant alterations in the schedule of study in the subsequent thirty years. The Law Society provided that in first year students would study Contracts, Real Property, Common Law and Equity. In second year Criminal Law, Real Property, Personal Property, Contracts, Torts, Equity, Evidence, Canadian Constitutional History and Law, and Practice and Procedure were taught. The course for third year consisted of Contracts, Real Property, Criminal Law, Equity, Torts, Evidence, Commercial Law, Private International Law, Construction and Operation of Statutes, Canadian Constitutional Law and Practice and Procedure. Relevant statutes were included in the courses of each year.

The course of study in 1893 is of particular interest since our research revealed a Calendar from that year into which the cost of the student's books in each year of the course had been pencilled. According to our unknown annotator, the books necessary in first year cost \$40.00. A second year student who already had the first year texts would have to spend an additional \$50.50 for more books. Extra books in third year cost \$110.00.

The Legal Education Committee acted as a collective "Dean" of the Law School on matters of discipline as well as on questions of curriculum. Indeed for the first years of his administration the Principal was uncertain as to what his powers of discipline were. In 1892 Mr. Reeve reported that due to the size of the classes he had had some trouble with mischievous students creating distractions; he requested a definition of his disciplinary authority from Convocation in order that he might maintain order in lectures.⁴⁰ The Legal Education Committee was directed to frame suitable regulations to give the Principal disciplinary powers. They reported back to Convocation in September, 1892, with draft regulations, the gist of which were: first, that no student whose conduct at lectures was not on the whole good, should be deemed to have duly attended the lectures, and the facts relating to his conduct and attendance should be reported to the Legal Education Committee; second, that if a student were guilty of misconduct at any lecture, his attendance at the lecture might be disallowed; and third, where a student's misconduct was sufficiently serious, the Principal might suspend him from school until the Legal Education Committee were to make a ruling on the case.

Under the circumstances Principal Reeve's job was not an easy one. He not only had to educate students in the Law, he had to educate the Law Society in the meaning of legal education. The progress which he was undoubtedly making on both fronts was tragically cut short by his unexpected death in May of 1894. On the day following his demise, the Treasurer of the Law Society and the Chairman of the Legal Education Committee attended at the Law School and declared it closed for the remainder of the term.

⁴⁰ P.C. 27 May 1893.

2: *Newman Wright Hoyles, 1894-1923: An Interlude*

Throughout the summer of 1894 the Law Society searched for an appropriate successor to the late Principal Reeve. By fall, Mr. Newman Wright Hoyles, Q.C., had been appointed Principal of the Law School. The administration of Mr. Hoyles was chiefly remarkable for two things—its length (almost twenty-nine years) and its relative stability and lack of innovation. If Principal Reeve could be said to have been one of the “builders” in the history of Ontario legal education, Principal Hoyles was a custodian. The foundations for academic legal education that had been laid in the School’s first five years were preserved largely intact but were neither expanded nor built upon. The next real advances in Ontario’s system of training in law came not under Principal Hoyles but under his successor Dean Falconbridge.

The securing of the services of Mr. Hoyles, who was the son of a former Chief Justice of Newfoundland, was well received in legal circles. He had been a practising lawyer whose interests were mainly confined to Equity but he was considered to be an eminently suitable Principal of the law school. The editor of the *Canadian Law Times* remarked that the Law Society was to be congratulated on the appointment,⁴¹ and the editor of the *Canada Law Journal* reported: “Mr. Hoyles is a highly trained and well-read scholar, as well as a sound lawyer; in manner he is courteous, a gentleman by birth and instinct. He has, moreover, combined with force of character and great industry, a strong sympathy for young men, with whom he has always been a favourite.”⁴² His salary was set at \$5,000 per annum, an increase of \$1,000 over that received by Mr. Reeve.

Principal Hoyles’ approach to his duties as chief administrator of the Law School was demonstrated by some remarks in one of his earliest reports to Convocation. At the end of his first term as Principal Mr. Hoyles indicated to the Benchers that he felt that while the moot courts were useful in theory they were not so in practice because of the limited time available to second and third year students.⁴³ One can speculate that under similar circumstances Mr. Reeves might perhaps have requested that the time given to second and third year students be enlarged so as to allow for the continuance of a worthwhile program. Mr. Hoyles, on the other hand, either valued the system of legal education then existing too much to request change, or felt that it was not within his duties to suggest which changes should be made.

In the same report as contained the comment on the Moot Courts, Mr. Hoyles suggested that he be sent on a tour of the United States and England to study methods of legal education in those countries.⁴⁴

⁴¹ (1894) 14 CAN. L.T. 132.

⁴² (1894) 30 CAN. L.J. 617.

⁴³ P.C. May 1895.

⁴⁴ *Id.*

The Benchers agreed to this admirable project though they seem to have limited the tour to schools in the United States. A year later, at the close of the 1895-96 session, Principal Hoyles described to Convocation his visits to Harvard, Columbia, Yale and New York Law Schools, and indicated some of the things he had learned.⁴⁵

The whole idea of this study trip had sprung, as Mr. Hoyles admitted, from the similar tour taken by Mr. Reeve. The difference between the lessons learned by the two men is instructive and goes far to explain the apparent educational stagnation during the Hoyles regime. Principle Reeve noted the values of new educational methods; Principal Hoyles noted their weaknesses.

On his tour Principal Hoyles attended eight lectures at Harvard University, one of which was given by Dean Langdell the originator of the famous "case system" of instruction. Mr. Hoyles was unimpressed. He reported to Convocation that he was not convinced that the case system was best for teaching principles of law "or for making ordinary students into sound lawyers". The defects that he saw in the system were that the time required to teach all necessary principles would be excessive and that the system would only work in a class that included several advanced capable students who could participate in discussion. Another objection to this teaching method was that the library facilities at Osgoode were too scanty to support it. Mr. Hoyles also noted that at Harvard and Columbia enrolment was limited to students who had prior university degrees and that both schools strongly discouraged office work by students during the academic term. He tended to agree with the limitation on office work but felt that it would be impossible to adopt such a practice at Osgoode.

On his visit to New York Law School Mr. Hoyles observed the "Dwight method" of teaching law through recitation and exposition. With this method cases were used as illustrative examples rather than as the basis of instruction. Mr. Hoyles recommended the use of recitation and exposition along with lectures in first and second years and the adoption of a modified version of the case system for third year. Emphasis for all three years was to remain on the then used texts and lectures. He also suggested that second and third year moot courts be abolished and either special lectures or case discussions be substituted therefor.

Principal Hoyles' rather conservative approach to legal education may have had an adverse effect on the still young Law School. At this time attendance at the School was compulsory only for the second and third years of the course. The size of the School's enrolment was due at least in part to the number of students that it could attract to its first year lectures. At the close of Mr. Reeve's final term (1893-94), it was reported that 234 students had been enrolled and 785 lectures delivered. Principal Hoyles reported in the following year that enrolment had dropped to 179 students (only 46 students in the first year,

⁴⁵ *Id.* May 1896.

71 in second and 62 in third), and the number of lectures delivered was only 691. By the end of the 1896-97 term enrolment had risen to 195 students but the number of lectures had dropped still lower to 660.⁴⁶

On the 17th May, 1898, Principal Hoyles recommended to Convocation that first year attendance at lectures be made obligatory for all students-at-law. Convocation obliged him with a motion that the entire three year course be made compulsory. Incredibly, two years later Mr. Hoyles had to report that enrolment for the 1899-1900 session had fallen to 146 and the number of regular lectures was down to 646.⁴⁷

Attendance did begin to rise again as the new century progressed. The fall of 1909 saw 202 students enrolled and, in the following session, an extraordinary influx of students pushed attendance to 270 and finally broke the mark set under Principal Reeve.⁴⁸

One early and interesting addition to the student body was the School's second lady student, Miss Eva Maud Powley. Miss Powley followed in the pioneering steps of Clara Brett Martin by entering as a student of the matriculant class on the 6th December, 1895.⁴⁹

Miss Martin at this time was trying to culminate her legal studies by gaining entrance to the practice of law. The story of her call to the Bar paralleled that of her admission to the law school. At Convocation on May 18, 1896, a letter was read from Miss Martin stating that she wished to avail herself of the provisions of the Statute 58 Victoria, c. 28, re "Call of Women to the Bar" (58 Victoria, c. 28). Mr. Osler gave notice that he would move the adoption of rules to implement the Act. On June 5th, Mr. Osler's motion was defeated by an amendment in the following terms: "That it is inexpedient to make rules providing for the admission of women as barristers-at-law." After summer vacation, however, the Benchers moved and carried, on a division, that the Law Society should prepare rules in accordance with the Act re Call of Women to the Bar. On September 25th the draft rules were given first reading, with second reading set for November 17th. On the appointed date, a motion was made that the order calling for the draft rules be rescinded, but the motion was lost and on the following day, the rules were read a second and third time, and passed. Miss Martin was called to the bar of Ontario on the 4th December, 1896.⁵⁰

Despite their fluctuating and probably disappointing numbers, the student body did gain a measure of recognition during the tenure of Principal Hoyles. In November of 1899, the Benchers granted twenty-five dollars to the Osgoode Association football club. This

⁴⁶ See *P.C.* June 1894, May 1895 and June 1897.

⁴⁷ *P.C.* June 1900.

⁴⁸ *P.C.* Principal's Report 1910.

⁴⁹ *P.C.* 6 Dec. 1895.

⁵⁰ *P.C.* 18 May 1896; 5 June 1896; 14 Sept. 1896; 25 Sept. 1896; 17, 18 Nov. 1896, and 4 Dec. 1896.

appears to be the first grant made to any student organization, athletic or otherwise. When, in November of the following year, the Football Club petitioned the Law Society for a grant large enough to equip a team, the matter was dealt with more circumspectly. The whole question of the formation of student societies and the aid, if any, that should be given to them by Convocation was referred to the Legal Education Committee.⁵¹ This action resulted in the passing of a resolution on the 6th February, 1901 to the effect that "no Students' Club or Society should be recognized as connected with the Law School or a representative thereof, nor shall it be entitled to bear the name 'Osgoode', 'Osgoode Hall', 'Law School', 'Law Society', 'Law Students', or other similar name, unless and until it shall have been affiliated with the Osgoode Legal and Literary Society as a branch thereof, and unless and until its constitution and rules or by-laws have been approved by a committee consisting of the Treasurer, the Chairman of the Legal Education Committee, the Principal of the Law School, and the President of the Osgoode Legal and Literary Society." Whether, after all this, the Football Club got its grant is unknown.

The Law School's physical facilities, though they were altered and repaired from time to time, were not significantly expanded during Principal Hoyles' thirty years in office. Mr. Hoyles did lend his support to a rather improbable scheme to have a gymnasium built, but his efforts came to naught. Around 1895, suggestions that a gymnasium be constructed were heard from several sources; it was felt that such an addition was necessary in order to develop a *esprit-de-corps* among the students. At the end of that year the students themselves presented a petition to the Benchers requesting that the third storey of the Law School building be converted into a gymnasium. The *Canadian Law Times* considered this to be a popular and worthy cause and lent its support to it. "The students themselves," said the editor, "have done a great deal to earn the respect and admiration of the public in athletic pursuits and it behoves the Law Society to encourage the cultivation of that courage, patience and skill which are essential to a successful pursuit of athletics and which, as absolute qualities, tend to the improvement of the man in every walk of life." Convocation, however, reported that it was architecturally impossible to utilize any part of the existing law school building as a gymnasium and the idea was abandoned.⁵² The story closes with Principal Hoyles pointedly recording his disappointment with the Benchers' decision.⁵³

A more realistic, though hardly more successful, effort at improving the school's facilities centered on the modernization of the heating and ventilation system. The newly-built School had evidently been deficient in this regard and complaints on the inadequacy of the heating and ventilation in the lecture rooms were continually presented to Convocation. Convocation continually referred the complaints to its Finance Committee; the Finance Committee continually buried them.

⁵¹ P.C. 20 Nov. 1900.

⁵² (1896) 16 CAN. L.T. 20.

⁵³ P.C. May 1896.

Plans for improvements to the heating system were actually drawn up in 1898 but they, too, died in committee.⁵⁴ In December of the following year the school's lecturers and students were moved to present a joint petition to Convocation requesting that prompt and effective steps be taken to improve ventilation in the lecture rooms. Predictably, the petition was referred to the Finance Committee.⁵⁵ It was fully twelve years later before the long suffering and long suffocating students got relief. On June 14, 1912, Convocation ordered the student library removed to the building's attic, that the space occupied by the library be turned into much needed lecture and common rooms, and that a new heating system be installed.

The hesitant, uncertain, and sometimes retrogressive progress that characterized the changes in the School's enrolment and facilities also characterized the alterations in the school's administrative structure. Step by step the School was becoming less an arbitrary series of lectures and more a genuine educational institution; but the advances were small and slow in coming. In his first annual report to Convocation, Principal Hoyles recommended that the students be given a short vacation at Easter.⁵⁶ Two years later, in June 1897, he reported an improvement in the examination system through the use of pseudonyms.

As has been mentioned, attendance at the law school was made compulsory for all law students in 1898. At this time matriculants (students without university degrees) attended their first year lectures in the first year of their period of articles and their second and third years of lectures in their fourth and fifth years of articles. At the meeting of Convocation on June 26, 1900, the Benchers, pursuant to recommendations made by the Legal Education Committee two years earlier, made the entire three years' attendance at law school continuous and unbroken. Matriculants attended lectures during their third, fourth and fifth years of articles, and graduates attended throughout their three years of service. At that same meeting of Convocation, responsibility for the Phillips-Stewart Library was transferred to the Principal, who was given power to appoint student librarians who would receive "reasonable remuneration".

Student fees did rise during Principal Hoyles' administration, though perhaps less than might have been expected in a three-decade span. In December of 1900, the Joint Committee on Legal Education and Finance recommended to Convocation that steps be taken to equalize the costs and revenues of the Law School by increasing fees from \$40 to \$50 per session. It was further suggested that the fees increase by \$10 each year until they reached \$100 for the 1906-07 session. In 1900 Convocation approved the increase to \$50 only. In November 1905, however, Convocation ordered a further increase in fees to \$80 per session for the 1906 term and to \$100 per session for

⁵⁴ *P.C.* May 1899.

⁵⁵ *P.C.* 8 Dec. 1899.

⁵⁶ *P.C.* May 1895.

the 1907 term. The separate fee to the Law Society for admission as a student-at-law remained at \$50 throughout these years.

A student's eye view of the administration of the school in the early years of the century can be gained from Edward Gillis' 1905 account of Ontario legal education.⁵⁷ "Each School term ran from September to April. Semi-annual examinations were written in December and May. Daily records of attendance were kept and students were required to attend five-sixths of all lectures and four-fifths of each series. Failure to pass any exams necessitated re-attendance at the same series of lectures. Second and third year students held Moot Courts with one week of preparation for argument of cases put by the Principal or presiding lecturer. Exams for the year had to be passed with an aggregate of 55% of total marks or better, and not less than 29% on any one paper. In order to gain honours, a student had to make an aggregate of over 75% of all marks, and the same percentage on the honours exam."

The evolution of the School's curriculum was every bit as slow as the evolution of its administrative policies. One striking advance was made early in Principal Hoyles' term of office. In his annual report of 1897 Mr. Hoyles recommended that the teaching and examination schedule at the School be altered so that several subjects be taught simultaneously throughout the year.⁵⁸ This innovation was intended to discourage the cramming that was inevitable when a single subject was taught and examined upon before another subject was begun.

The further changes in the curriculum were small. In 1897 the Law Society ordered that some of the third year moot courts be replaced with special lectures on Legal Ethics, Medical Jurisprudence, Municipal Law, and Company (Winding-up) Law.⁵⁹ The next change in curriculum came as a result perhaps of criticism of the school in the *Canadian Law Journal*. In 1899 that periodical, in an editorial remark, indicated that Mr. Hoyles' efforts had been, though beneficial, not wholly satisfactory, because students on their call to the Bar were, generally speaking, ignorant of practical matters: "Law students, under the present system, are, for some reason or other, ornamental rather than useful in an office."⁶⁰ In June of that year the Benchers responded by ordering that lectures in Elementary Practice be given in first year and that Constitutional Law be added to the examinations in third year.

The program of special lectures begun in 1897 expanded and eventually became an annual element in the curriculum. By the session of 1899-1900, when the regular lectures had dropped to only 645, special lectures were given in Interlocutory Applications, The Law of Costs, Preparation for Trial, Legal Ethics, The Municipal Act,

⁵⁷ Gillis, *supra*, note 11.

⁵⁸ *P.C.* June 1897.

⁵⁹ *P.C.* Sept. 1897.

⁶⁰ (1899) 35 *CAN. L.J.* 257.

Counsel's Duties at Trial, Guarantees, and Procedures under Winding-up Acts.⁶¹ These lectures were delivered by eminent members of the bench and bar and tended to cover the same material from year to year. Changes did occur when, in 1904, after continued pressure from Principal Hoyles, Convocation elevated Company (Winding-up) and Municipal Law to the status of compulsory courses.⁶²

Perhaps because of the teaching burden borne by the special lecturers the School found it possible to continue to operate with only part-time staff. Principal Hoyles remained the only full-time teacher until 1919. Changes in staff occurred with the methodical slowness that marked all other changes. John Delatre Falconbridge began a half-century association with the School by being appointed Law Society Examiner by Convocation in November of 1904. Five years later, Mr. E. Douglas Armour ended his 28 years as a lecturer at the School with the tendering of his resignation. He was replaced in February 1910 by a man who was to become almost equally venerable in the service of legal education, Mr. Shirley Denison. In subsequent years Mr. H. W. A. Foster and Mr. S. H. Bradford replaced other retiring lecturers and "demonstrators in practice" and a permanent librarian for the Phillips-Stewart Library was added to the staff. Principal Hoyles was aware of the need to augment the permanent teaching staff but he found the Law Society unsympathetic. In 1910 he requested that a vice-principal be appointed but, according to one report, the suggestion was "airily" dismissed.⁶³ It was nine years later that Mr. Falconbridge, by then a staff lecturer, was instructed to aid the ageing Mr. Hoyles by assuming the position of Assistant Principal.

With the year 1910 and following, the history of the law school enters a period that is within living memory for many barristers and former students. The emphasis on attendance that Gillis reported in 1905 in no way diminished as years passed. A student at the School ten years later recalls that Principal Hoyles was very strict on this matter. Each student was assigned a numbered seat in the lecture rooms so that absentees could be easily noted. The seat numbers fulfilled a secondary function in that they served the lecturers in lieu of names for their students. Mr. Hoyles was apt to call on 'seat 38' for a discussion of the ratio in *Smith v. Jones*. Mr. Hoyles is said to have been a fine gentleman whom no student ever disparaged. A distinguished criminal lawyer who sat at his feet has, however, had the temerity to point out that though the Principal lectured on Criminal Law, he knew 'absolutely nothing' about the subject. Mr. Hoyles sported a small white beard and, in his later years, was known affectionately and universally as "Daddy Hoyles". The affection was

⁶¹ P.C. June 1900. The lecturers were, respectively, J. H. Moss, Esq.; W. E. Middleton, Esq.; H. W. Rowell, Esq.; Hon. Mr. Justice Rose; Hon. Sir W. R. Meredith, C.J.C.P.D.; B. B. Osler, Q.C.; Hon. Mr. Justice Moss; Thomas Hodgins, Q.C., Master-in-Ordinary of the Supreme Court of Judicature of Ontario.

⁶² P.C. June 1904.

⁶³ (1910) 30 CAN. L.T. 759.

genuine. Several students recall vividly Principal Hoyles' closing remarks to their respective graduating classes and suggest that there was not a dry eye in the room when he sat down.

The part-time lecturers are, on the whole, remembered with less reverence. Though some, especially Messrs. Falconbridge and Denison, were quite effective, others were barely adequate. Mr. Armour tended to "chew his words" until they were almost incomprehensible. Mr. Bradford simply "read the Digests" at dictation speed. Students took down every word and deciphered the material points later. Mr. Bradford's lectures may have lacked depth but they had compensatory features. One of his more diligent students managed to write a perfect (100%) examination in Company Law simply by reading every case cited in class.

The Law School with its lectures, its examinations, and its student organizations, was far from being the centre of the students' lives in the early part of the century. Throughout the Hoyles' period the two lectures per day schedule (one at 9 in the morning and one at 4 in the afternoon) remained in force. The major and most valuable part of the student's day was spent in service to the lawyer who was his principal. Nor surprisingly, few students in these years recall much in the way of school centered student activities taking place nor was there any appreciable amount of school spirit evidenced by the student body. The heavy work load borne by the articling students also precluded most serious academic effort. The few students who distinguished themselves in the law school examinations recall studying late on a great many nights to do so.

It could be said in fact that in these years the articling system was the major vehicle of legal education for the majority of students. The matriculants, who, according to the estimate of one student of the time, made up about sixty per cent of the law school class, spent two years in practical study before they even heard a lecture. As lawyers who received their call in these years never tire of pointing out, the "unquestioned leaders of the bar" of those and many later decades were not university graduates. Men like Tilly, Rowell, Robertson, McCarthy, Carson, McRuer and Cartwright were moulded chiefly by the articling system and their distinction argued persuasively for its validity.

There were, of course, less flattering opinions of the value of the time spent by students in law offices. Mr. Charles Elliot presented the following charming but slightly damning sketch of the articulated matriculant student to the Canadian Bar Association in 1910:⁶⁴

"Generally he is about sixteen or seventeen years of age, ordinarily indeed too immature to begin the study of law. Having deposited with the Law Society his matriculation certificate, he is entered on the rolls and starts out to find a lawyer needing assistance. When such a one has been found the usual monetary conversation takes place. In earlier days a premium often was paid to get into a good law office, but nothing of the

⁶⁴ (1911) 31 CAN. L.T. 173, 174.

kind is now met with, not because there are no good law offices, but the times have changed. Our typical lawyer points out, and quite properly so, how comparatively useless the student will be in the office during his first year at least, and enlarges on the vagrant bits of legal information to be found floating around his office and awaiting capture. Finally the student is made happy by being promised the standard union wage of two dollars per week. Doubtless he is not much good either to himself or his principal during the first year of service. His surroundings are novel and it takes him some time to get acclimatized. He does odd jobs, runs messages, sweeps the office, lights the fires, copies letters, goes for the mail, serves and files papers, does a good deal of just sitting around, occasionally is honoured by carrying his chief's red brief bag, the blue bag having largely gone out of fashion, and now and again copies some documents full of technical terms entirely unknown to him. He is a little lower than the stenographer, but as he is studying law, officially he is a few degrees above the office boy. His wages fairly indicate the value placed on his services. If not studious he worries little about books. Very probably as it is alleged he is studying law he may pick up a calf bound book, but his eyes not yet being open this class of literature soon palls. One day when the principal is out someone calls and he has his first experience in meeting a client face to face. During his second year this so-called practical method of instruction is continued but possibly with some improvement. With considerable trepidation he now ventures into the Judge's Chambers, gets on a better footing with the Court officials, has a bowing acquaintance with the lawyers in town and in 'talking shop' with his fellow students introduces legal phraseology with a fair degree of *sang froid*. With some better success than in his first year he may read a little law and get familiar with the books in the law library by hunting them up for his chief and carrying them into Court where he timidly steals into a chair at the barristers' table. Indexing, filing, docketing, copying onward through this year he goes until the time comes when he must get ready to go to the Law School."

* * * *

As his long administration wound to a close the almost somnolent stability that characterized legal education under Principal Hoyles began to crumble. The war that all over the world shattered the Victorian twilight of the Edwardian years had its repercussions within Osgoode Hall. Numerous barristers and students went to the trenches of France; many died, but a great number returned.⁶⁵ The Law Society, with perhaps more gallantry than caution, relaxed their requirements for returning law students. On February 4, 1915, Convocation passed the following rules:

"That all students of the Law Society who volunteer and enlist for the present War, qualify and go to the front, and who return in good standing and having borne themselves as members of the Law Society and soldiers ought to do, shall be advanced as follows:

"First year students to the second year without examination. Second year students to third year without examinations, Third year students to Call to the Bar and Certificate of Fitness without examination."

By 1919 the number of students returning from the war had increased to such an extent that further provisions had to be made

⁶⁵ H.R.H. the Prince of Wales is recorded as having made the following tribute to the members of the Law Society who served overseas:

"I do now want to express to you my admiration for the wonderful war service of this Inn [sic.]. You had 300 barristers serving in the War and still almost more wonderful, out of 330 students you had 300 serving at the front. I do congratulate you most heartily on such a record.

"With you I mourn the loss of those 70 Barristers and students who will never return. I offer to you my deep sympathy for the splendid men you have lost."—(1924) 2 CANADIAN BAR REVIEW 88.

to accommodate them. Convocation ordered that the School remain open during that summer and that lectures be held for discharged second and third year students. The standards set for these classes were not particularly rigorous. One student recalls consulting Principal Hoyles prior to examinations on some points that were unclear. He was told not to worry: "That is the veterans' class, we're not going to plow anyone". In the same year the Ontario Legislature moved to allow further relief for veteran students. An Act, which had a precedent in a similar Act drawn up at the end of the war of 1812, was passed which allowed the Law Society to shorten the period of articles in any manner for any veteran. The whole episode of the veteran students shows an admirable patriotism but demonstrates graphically the low estate at which legal education lay in these years.⁶⁶

The staid and, by then, dated system of Ontario legal education was being challenged by more than world events however: a new concept of the legal discipline was slowly evolving. Much of the stability of the Hoyles' period stemmed from the fact that it was generally accepted among the Ontario profession that the Law School's lectures were at best an adjunct to the far more significant process of legal training in law offices. No lesser person than Sir Frederick Pollock had remarked approvingly on the Ontario emphasis on practical instruction:

"In one respect indeed the law school at Osgoode Hall is unique by reason of its intimate connection with the practical side of the profession. It is not only a recommended, but a necessary road to being called to the bar of the Province. Our Canadian brethren do not believe that sound knowledge comes by examination alone."⁶⁷

What Sir Frederick did not realize, perhaps, was how little his brethren appreciated the knowledge that could come from lectures and examinations. When in 1905 the University of Toronto renewed

⁶⁶ (1919) 55 CAN. L.J. 158.

The Act read as follows:

"1. This Act may be cited as The Law Society Act, 1919.

"2. Where any person has served in the Canadian Expeditionary Force, or in the Imperial Expeditionary Forces, or in the Naval Forces in the late war, and is in good standing, or has been discharged in good standing, The Law Society of Upper Canada, notwithstanding anything contained in The Law Society Act, The Barristers' Act, The Solicitors' Act, may, in its discretion, by resolution of the Benchers in Convocation assembled, shorten the period for which such person would otherwise be required to stand upon the books of the Society before being called to the Bar.

"3. Notwithstanding anything contained in the said Statutes, or in the Articles of Clerkship by which an articled clerk is bound to serve, the Society may, in like manner, and in such cases, in its discretion, shorten the time of service under such Articles, and any such resolution shall be a complete discharge of such articled clerk from the obligations of such Articles for any time in excess of such shortened period.

"4. Notwithstanding anything in the said statutes, the said Society may in like manner authorize such of the aforesaid persons as they may deem proper who were not articled before joining any such Forces, to enter into Articles of Clerkship for such shortened period as they may deem proper in each case.

"5. The Benchers may make such rules as they may deem necessary for the better carrying of this Act into effect."

⁶⁷ The quotation is part of Pollock's Preface to the Revised Reports of 1903. See Gillis, *supra*, note 11.

its decades-old proposal that the Law School be turned into a university faculty of law, the Benchers refused to encourage the idea in any way.⁶⁸ Similarly, when the Legal Education Committee became convinced, five years later, that students could not gain a full knowledge of practice in a law office, they concluded that not less but more practical training and more practice-oriented lectures were called for.

"Additional facilities should be afforded for teaching the practical work in the office of a solicitor and conveyancer, including therein the preparation for all classes of documents constituting the output of such offices, and the conduct through the Courts of superior, inferior and summary jurisdiction, of the various classes of actions and proceedings. It would appear not to be practicable to expect to obtain all the instruction necessary upon these subjects from the present staff of lecturers. The Committee think [sic] that the present lecturers should, so far as possible, if they are not already doing so, endeavour to impart to the students the methods of practically applying the principles of law, to the elucidation of which their lectures must of necessity more particularly be directed."⁶⁹

There were other views of the legal educational process. The creation of two new law school scholarships shortly after the turn of the century indicates that in some quarters at least academic education and research were valued. In 1908 the Christopher Robinson Memorial Scholarship was established by a trust deed and provided in essence, that an award of \$40 worth of books (with Christopher Robinson Memorial Scholarship Imprimatures) and \$60 cash be given to the author of the best essay composed by a member of the graduating class.⁷⁰ Two years later an endowment of \$2,000 from the estate of Captain Edmund Barker Van Koughnet, R.N., C.M.G., was used to establish the Chancellor Van Koughnet Scholarship as a memorial to Hon. Phillip Michael Matthew Scott Van Koughnet, the Captain's father and a former Chancellor of Upper Canada.

More forceful evidence of the growth of a new approach to legal education came from the Canadian Bar Association. In 1919 and 1920 the Association's Legal Education Committee became concerned over the matter of curriculum. In an effort to promote uniformity of education throughout the Dominion, a standard three-year curriculum of legal studies was proposed. It was also recommended that the minimum standards for admission to law school be the successful completion of studies equivalent to those of a first year B.A. course at an acceptable university. The Committee approved the provisions requiring that law students serve in a lawyer's office for three years if they were graduates and five years if they were not, but suggested that the requirement of office attendance be suspended during the part of the year in which the student was at school.⁷¹

⁶⁸ *P.C.* December 2, 1905, Feb. 8, 1906.

⁶⁹ *Id.* 1910.

⁷⁰ *P.C.* Sept. 18, 1908. The first award of this prize, in 1909, went to Mr. Franklin Wellington Wegenast who later distinguished himself with a classic text on Company Law.

⁷¹ (1919) 55 CAN. L.J. 158.

The proposed standard curriculum was adopted by the Annual Meeting of the Canadian Bar Association on September 21, 1920.⁷² The Law Society of Upper Canada was not impressed. On October 21 of that year Convocation did order a slight raising of the Law School admission standards (thenceforth students would be required to have University of Toronto Senior Matriculation rather than Junior Matriculation) but left the course of legal studies unchanged. In the following year the Proceedings of the Bar Association noted that the Benchers had made no move to adopt the standard curriculum.⁷³

By the end of Principal Hoyles' administration even the Ontario bar was becoming aware of the need for reform in legal education. In a 1922 address to the Canadian Bar Association, Mr. R. V. MacLennan, K.C., a Toronto lawyer, suggested some changes which were, to say the least, visionary. He remarked that it was probably the natural sentiment towards "this lovable old building" (Osgoode Hall) that had impeded the establishment of university faculties of law in Ontario. He, however, favoured the replacement of the concurrent lecture and apprenticeship system with full-time academic study of law. Furthermore, he called for the granting of degrees at

⁷² (1920) 5 PROCEEDINGS OF THE CANADIAN BAR ASSOCIATION 250.

The standard curriculum suggested was as follows:

First Year:

1. Contracts
2. Torts
3. Property (Real and Personal) 1
4. Constitutional History
5. Criminal Law
6. Practice and Procedure (Civil and Criminal) Elementary
7. History of English Law
8. Jurisprudence (if not taken in third year)

Second Year:

1. Equity (1)
2. Wills and Administration
3. Evidence (1)
4. Sale of Goods
5. Bills and Notes
6. Agency
7. Corporations and Partnership
8. Insurance
9. Practice and Procedure (including instructions as to the use of law reports, digests and textbooks)
10. Property (Real and Personal) 2
11. Landlord and Tenant

Third Year:

1. Constitutional Law
2. Equity (2)
3. Evidence (2).
4. Practice and Procedure (including Criminal Procedure)
5. Conflict of Laws
6. Mortgages
7. Suretyship
8. Practical statutes
9. Rules of interpretation and drafting
10. Shipping and/or Railway Law
11. Domestic Relations
12. Public International Law
13. Jurisprudence (if not taken in first year)
14. Legal Ethics.

⁷³ (1921) 6 PROC. OF THE C.B.A. 242.

the Law School and for the addition of post-graduate legal studies.⁷⁴ Mr. MacIennan underestimated the power of sentiment: thirty years were to pass before his recommendations were even partially fulfilled.

* * * *

On May 25, 1923, after twenty-eight years of service to the Law School, Principal Newman Wright Hoyles presented his resignation to Convocation. He was by then old (he was in his seventy-ninth year) and honoured (Queen's University had conferred an Honorary Doctorate of Laws upon him in 1902). In his final years much of the burden of the School's administration had fallen upon Mr. Falconbridge, his assistant. Even under the new administrative guidance, however, the tenor of the School, its methods and its systems, remained unchanged. Indeed, there was almost no material difference between the School from which Principal Hoyles resigned and the School that he had joined so many years earlier.

Mr. Hoyles is chiefly remembered by his students for his gentlemanly qualities and his graciousness. His delicacy was so great in fact that he had difficulty in teaching the Conflicts of Laws divorce cases to mixed classes; only by endless circumlocutions could he reconstruct an adultery in words discreet enough for ladies' ears. He is also remembered for his deep Christian convictions. For one of his students Mr. Hoyles' most memorable words were found in his farewell remarks to the graduating class:

"I have one particular recollection of Principal Hoyles. He made a short valedictory speech to us when he had delivered his final lecture. I remember his saying that while he wished all of us success it was too much to hope that everyone would be successful in material things and he would content himself by hoping that each of us might deserve success. Then he quoted the words of St. Paul: 'I have fought a good fight, I have finished my course, I have kept the faith. Henceforth there is laid up for me a crown of righteousness.' and reminded us that those triumphant words were written by a man who, having heard that his last appeal was dismissed, was awaiting execution. I remember that we were all touched and moved by what he said."⁷⁵

Principal Hoyles is recalled with great affection and deep respect by those who knew him. Unfortunately, however, and perhaps for reasons beyond his control, he will not be remembered as a significant figure in the history of Ontario legal education.

⁷⁴ *Legal Education in Canada* (1922) 42 CAN. L.T. 319.

⁷⁵ Taken from correspondence with the editor.

CHAPTER III. THE PRIESTS OF A DISCARDED RELIGION

John Delatre Falconbridge, 1923-1948

"The truth is that the world very nearly stole a march on the legal profession by becoming educated."¹

When, in 1923, John Delatre Falconbridge was made Acting Principal of the Law Society of Upper Canada's Law School he was no stranger to legal education in Ontario. His first association with the School had been in the capacity of Examiner; a position which he had assumed in 1904. In 1909 he was made a part-time lecturer and ten years later he became Assistant Principal. He was, indeed, the obvious choice to succeed Principal Hoyles. Dean Falconbridge was the son of a former Chief Justice (Sir Glenholme Falconbridge) and the scion of the most prominent legal family in the province. Not only was his education (B.A. and M.A. from the University of Toronto as well as the usual legal studies) considerably more extensive than that of the average legal practitioner, he was also, as his subsequent actions were to prove, well aware of the most progressive trends in legal education. Falconbridge's appointment as Dean augured well for the critical years that lay ahead for the school.

The role that Mr. Falconbridge was to play in the history of Ontario legal education was in part determined by the character that he brought to his new position. He was, as befitted his patrician lineage and upbringing, a complete gentleman, delicate and unfailingly gracious. He was also a perceptive and dedicated legal scholar whose writings on subjects such as Mortgages and Conflict of Laws would, in later years, earn him a world-wide reputation. Dean Falconbridge's refinement combined with his scholarship in an essentially retiring disposition. Though he commanded both the affection of his students and the deep respect of his colleagues, he seems to have remained a rather remote figure. The almost fifty years of his association with the Law School have yielded neither an anecdote about him nor a witticism by him nor a familiar name for him. It is also perhaps true that the new Dean's taste for legal research was not matched by a capacity for administrative organization and action. Close acquaintances in these years recall that he took little delight or interest in the administrative duties of his office. Dean Falconbridge's impact on Osgoode is measured in ideas rather than programs; his influence on legal education in Ontario, though unobtrusive, was to be significant.

For all of its familiarity, the Law School may have presented a rather discouraging prospect to its new head. Principal Hoyles' long administration had been stable almost to the point of stagnation. The school's concept of legal education was outmoded and its facilities were no better. In 1924 John Shirley Denison, himself a lecturer in

¹ From the report of the Legal Education Committee to the Canadian Bar Association (1932) 17 PROCEEDINGS OF THE CANADIAN BAR ASSOCIATION 150.

law, gave this affectionate but unflattering description of legal education at Osgoode Hall:

"The school has not greatly changed in method or equipment during the last 30 years.

"The equipment consists of three class rooms built years ago and much too crowded now, a library of 2,500 books, two small common rooms, one for men and the other for women, and cloak rooms in the basement.² The Principal has a room and the lecturers and demonstrators share one among them.

"There is no gymnasium, campus or other place for exercise.

"There are not enough teachers.

"The school has no name, no year book, no separate budget and no public function at which students about to graduate or who have won laurels, may ask their friends to see them crowned. There is no public recognition of the successes of its scholars.

"[The School lacks] a real *esprit de corps*. There is no outside interest in the School, therefore it has not been held in much esteem. People are not proud of attending or graduating from it."³

The School was, in fact, in a rather anomalous position. With all its shortcomings it was far and away the largest law school in Canada.⁴ Despite the fact that a recent survey by the Carnegie Foundation ranked the Law Society's School very low in terms of quality (well behind Dalhousie Law School which in these years had an enviable reputation),⁵ it had since 1889 turned out about 2,500 lawyers.

Canadian comparisons, however, barely suggest the full incongruity of Osgoode's position as a *de facto* major law school. With the resignation of Principal Hoyles in 1923 Falconbridge was left as the

² The three rooms were the lecture room on the second floor where first year took its classes. The two rooms that share the corridor with this room were the common rooms. The two lecture halls on the first floor were then separate and the second year class took lectures in the east room and the third year class in the west one. The library was on the third floor. Mr. Denison's estimate of the number of volumes is slightly low. In February 1924 it was reported to the Convocation of the Benchers that the student library held 2,727 volumes. The Great Library held 60,454 volumes and was open to students under certain restrictions.

³ *Legal Education in Ontario* (1924) 2 CANADIAN BAR REVIEW 85.

⁴ Law Society of Upper Canada, *Proceedings in Convocation* (hereinafter *P.C.*) Jan. 1927. The following comparative figures for the year 1925 were presented to Convocation:

School	Full-time Teachers	Other Teachers	Students
Dalhousie	3	20	50
McGill	3	12	64
Osgoode	3	3	353
Saskatchewan	3	2	42
Manitoba	3	7	55
Montreal	0	17	149
Alberta	3	4	56
Laval	0	22	89
New Brunswick	0	17	20
Vancouver	0	—	31
Harvard	17	9	1320
Yale	6	13	418
Columbia	7	22	721
Michigan	9	8	558
Cornell	7	5	187
Pennsylvania	6	14	343
Chicago	6	6	455

⁵ Henderson, *A Problem of Legal Education*, (1925) 3 CAN. B. REV. 371.

only full-time member of the school's staff. He was assisted by four part-time lecturers.⁶ The necessity of articling made all the students part-time scholars. In the same year, Dean Stone of Columbia Law School could boast of a "full-time university law school with university ideals of scholarship." Most of his faculty were full-time university teachers of law and the course was structured so as to "absorb the student's full working day". The Law Review at Columbia was already an important part of legal education; the "case method" was in full flower and the examinations were conducted by means of problem questions. The Phillips-Stewart Library at Osgoode was minuscule by any standard but comparison is odious. "In our library", wrote Dean Stone, "we now have about 100,000 volumes, all law books, in addition to works on history, political science and related subjects. Fully 25,000 of these volumes are directly accessible to students. . . . The Harvard Law School has an even more extensive library".⁷ When, by 1925, Falconbridge had two full-time and three part time faculty members working with him, Columbia was teaching about twice as many students with five times the number of staff.

The statistical comparison is perhaps misleading. Osgoode and Columbia were performing different duties and operating in entirely different contexts. At Columbia law was a scholarly and academic discipline. Osgoode, on the other hand, aimed only at preparing its students for the practice of the legal profession.

Not all Ontario barristers were blind to the lessons that Columbia and her sister universities held for the critics of legal education. In 1923, the same year as Mr. Falconbridge took over the administration of the school, the Lawyers' Club of Toronto presented some recommendations to the Law Society which were, in the light of future developments, almost prophetic. The Lawyers' Club suggested that the law school should become a full-time institution with both students and professors devoting all of their energies to legal studies. Furthermore, it was the Club's opinion that the head of the Law School should have full control not only over the courses of study but also over the staff, and that he should be free from interference by any committee. The Club also recommended that a student's practical experience should come through articling to a qualified lawyer after completing his academic studies and before being called to the bar.⁸

The Lawyers' Club was simply thirty years ahead of its time with these proposals. Some harsh words of Mr. Justice Cardozo were being used to describe the situation as it actually existed when these suggestions were being made.

"Ultra-conservative practitioners, through their control of the students' examinations, check the development of the curriculum at the same

⁶ Denison, *Legal Education in Ontario*, (1924) 2 CAN. B. REV. 85 at 87.

⁷ Stone, *Some Phases of American Legal Education* (1923) 1 CAN. B. REV. 646 at 651. See generally, 648 to 653.

⁸ See Wright, *The Legal Education Controversy in Ontario* (1949) 16 THE SOLICITOR 105. See also *Toronto Daily Star*, Jan. 29, 1929.

time that, through their control of his working hours, they prevent him from doing justice to the curriculum as it already is."⁹

The practitioners in question were, of course, the Benchers of the Law Society. Four decades of experience with a law school had taught these men neither an appreciation of the unique values of legal lectures nor a confidence in the administrative ability of their lecturers. The Law Society still looked on courses in law as merely one of many elements that went into the creation of a new barrister and it governed the school accordingly. The Benchers were not alone in their archaic evaluation of the School. The progressive stand taken by the Lawyers' Club can hardly have been typical of the feelings of the profession at large. Indeed, even at this time, many practitioners felt that the teaching of law was at best a poor substitute for practical office training. As one member of the bar put it in 1923:

"The law student being seldom capable of using the new mechanical substitute for the pen, it became obvious that some other than the digital approach to his mind must be sought, and in Ontario the law school was established."¹⁰

Both this mode of education and the habit of mind that valued it were about to pass into history, but their passing was slow.

The Benchers' rather Victorian ideas on training in law were administered by the Legal Education Committee of the Law Society. The Committee had charge over all branches of preparation for the profession and it carried out its duties with a fine lack of discrimination. It reported on applications for admission to the Society, calls to the bar, and law school matters in the same monthly submission to Convocation. Nor was its control over the school a matter of form; the Committee could in fact be said to have operated as a collective dean of the institution. Student petitions for special consideration, student body petitions on a variety of subjects (for example, a complaint that the book-keeping examination was "far beyond what could be reasonably expected either in time or in style of question", or a request by the "Hebrew" students that an examination be moved from its scheduled date which was Passover),¹¹ as well as the Principal's requests for additions to faculty or changes in the curriculum—all found their way to the Committee's office. When a lecturer's contract with the Law Society expired, the Legal Education Committee would put "the usual advertisement" in the *Globe and Mail* and interview all applicants before re-appointing the incumbent lecturers.¹²

Legal education being simply another prerequisite to the privilege of admission to the bar, the Law Society had no compunction about making it a source of substantial revenue. Indeed, the forty-year-old charge that law students were the major supporters of the Law Society was still widely, though perhaps unjustly, assumed to be true.

⁹ CARDOZO, *THE GROWTH OF THE LAW* at 28, quoted in *Legal Education in Ontario* 10 FORTNIGHTLY LAW JOURNAL 136 at 169.

¹⁰ Biggar, *Legal Education Again* (1923) 1 CAN. B. REV. 864 at 865.

¹¹ P.C. May 1924 and March 1924.

¹² P.C. April and May 1923. (The society was paying lecturers \$600 a year at this time.)

"From 1919 to 1923 inclusive . . . [the students] fees have far exceeded the outlay on them. The Law Society revenue for these five years was \$727,173.32 of which the students paid \$443,958.53, over 60 per cent., and the School cost \$140,303.46 excluding administration, or less than 20 per cent., leaving a surplus of over \$300,000."¹³

As might be expected, expenditures on students were hardly comparable to those made in the great American schools. "In 1922 each Harvard Law Student cost \$234, while in the same year an Osgoode man cost \$70."¹⁴

Perhaps because of this attitude towards fees law schools throughout Canada were, as professional schools went, notoriously under-endowed. As a 1929 report to the Canadian Bar Association put it, "The most inadequately endowed medical school of first rank in the Dominion has financial resources at least four times the total endowments of all the law schools in the Dominion together."¹⁵

The fact was, of course, that law schools in Canada generally, and at Osgoode in particular, were not, in the accepted sense of the term, institutions of professional study. The analogy to the highly demanding medical schools was at the time more than a little specious and no-one would have been more aware of this than the law students themselves. At the beginning of the Falconbridge era the Ontario law student found himself in a position essentially unchanged from that occupied by his predecessors of twenty or thirty years earlier. He still began his career by being classified as a graduate (that is, having one of several acceptable degrees from specifically named institutions)¹⁶ or a matriculant, and this classification still determined his duties with respect to articling. The matriculant, as was mentioned in earlier chapters, had to spend five years in articles, the graduate, three years. In either case, the required attendance at law school was part of the articling period but the matriculant passed his first two years of service without the benefit of the law school instruction.

¹³ Denison, *supra*, note 6 at 90.

The phrase "excluding administration" lends a distinct air of uncertainty to these figures. A statement of Revenue and Expenditures presented to convocation in June 1925 listed \$50,985.33 as the law school income and \$50,538.01 as its expenditures. Since the statement was not broken down in any way it is even less helpful than Mr. Denison's estimates. Students in 1924 paid \$50 on entrance for admission as a student-at-law (before beginning their period in articles) and \$100 per year as tuition for their three years at law school.

¹⁴ *Id.*

¹⁵ (1929) 14 PROC. OF THE C.B.A. 239.

¹⁶ A graduate had to be . . .

"(1) A graduate in the Faculty of Arts or Law in any University in His Majesty's Dominions empowered to grant such a degree,
(2) A holder of a diploma of the Royal Military College, Kingston,
(3) A graduate of the Faculty of Applied or Practical Science in the University of Toronto, of McGill University, Montreal, or of Queen's University, Kingston."

(From the 1924 Calendar)

The list of degrees acceptable as an alternative to Arts or law was added from time to time (thus degrees in Commerce or Forestry or a B.Sc. Med. would rate graduate status at different times) but was always taken seriously. The list was very substantially liberalized in 1946 after the Legal Education Committee had been forced to conclude that an M.D. degree from Queen's did not qualify its holder for graduate status. (See P.C. March 1946.)

The articling period was, in theory at least, very closely supervised by the Law Society and both the student and his senior had to swear affidavits that the Society's requirements had been complied with when the student applied for admission to the bar. The student under articles was not to absent himself from his duties to his senior nor was he to take "an office of emolument".¹⁷ Students were generally paid some small amount by the law office for which they worked. Two dollars a week (enough to cover car fare and lunch money) was the usual wage; ten dollars per week was extraordinary. The practitioners were fond of saying that, "a law student is the lowest form of life", and the students generally believed them. As one barrister later commented apropos his articling period, "We never dreamed that our services might be desired".

The Law School lectures were held, as they had been for so many years, twice daily, at 9.00 in the morning and at 4.40 in the afternoon. These lectures, occupying as they did, so minor and invidious a position in the overall educational scheme, were unavoidably basic and critically short of time. They nevertheless covered a wide variety of topics. In 1924 eight subjects were taught in first year, ten in second, and ten in third.

For all the profound conservatism that seems to invest this era, the period was one of crisis, conflict and debate for both the legal profession and legal education. The crises indeed were intertwined at many points; were shaped and finally solved by the same pressures. These were uncertain years for legal practitioners. Law, under the existing regime, was the easiest profession to enter and, though it

¹⁷ Some of the rules pertaining to a student's duties under articles were as follows:

The Solicitors Act

Sec. 9(1) Subject to the rules of the Society no student shall be admitted and enrolled as a solicitor unless

(a) during the time specified in his contract of service he has duly served thereunder, and, except while attending the courses of lectures at the Law School and undergoing examinations as prescribed by the rules of the Society, he has been during the whole of such term of service actually employed in the proper practice of a solicitor by the solicitor to whom he has been bound at the place where such solicitor has continued to reside, during such term or with his consent by the professional agent of the solicitor in Toronto.

Rule 94 of the Articles of Clerkship

"No student-at-law bound by articles of clerkship to any Solicitor shall, during the term of service mentioned in such articles, hold any office of emolument, or engage, or be employed in any occupation whatever other than that of clerk to such Solicitor, or his partner or partners (if any), or his Toronto agent with the consent of such solicitors in the business practice or employment of a solicitor."

Upon his application for call to the bar the student had to swear that he had served the Solicitors of the Supreme Court for the periods of time definitely set out

"except during the time I was in attendance at lectures at the law school and absent from service on leave granted me by my Principal in the Christmas and Summer vacations."

He swore also that "during the said period of service I was not engaged in any business or employment other than that of articulated clerk".

At the time of his application his Principal would also swear to the same facts. (*See P.C. Jan. 1942.*)

numbered many men of sterling quality in its ranks, it had also attracted a great number of mediocrities. To make matters worse, after the 1918 armistice a great number of men had been allowed into the profession with almost no training at all as a reward for their war service. A writer in 1934 spoke of the profession as being "bordered with a vast fringe of practitioners who simply cannot make an adequate living and who are prepared to give cut-throat competition of the worst kind."¹⁸ The idea that the profession was unhealthily overcrowded was not confined to the "dirty thirties" and it pervades legal literature from 1920 on.

Insufficient training, lack of work and low income had driven much of the profession to a poor estate. To many observers the answer to this unfortunate situation lay in a new approach to legal education. Raise the standards of admission to law school, stiffen up the law school course, and you automatically cut down on the number of calls to the bar and raise the quality of those who are called. The fact that the medical profession, with its higher admission standards and higher educational requirements, also enjoyed higher social prestige than the law was not lost on barristers.

There were, however, contrary viewpoints. Were improved standards (a requirement, for instance, that a university be a prerequisite to legal training) merely going to mean that the poor and not the unfit were barred from the law? Furthermore, as many of the province's finest senior partners could point out, a raising of academic standards might not be useful or even relevant in a profession whose most eminent members were trained by practical experience.

And so the argument continued. The areas of disagreement gradually fell into certain well-defined categories. What should the admission standards to legal training be? What should the standards of the training itself be? What should be included in the legal curriculum? Of what value was articling and should the articling period be precedent to, concurrent with or antecedent to the period of law school training? Should the law school course be full-time for law students?

The particular area of conflict tended to shift, often in response to economic conditions in the profession at large. Motives were mixed. Practitioners tended to confuse the upgrading of the legal profession with the limiting of legal competition. This conflict, however, lay at the very heart of the Falconbridge period of Ontario legal education and the reforms that Dean Falconbridge, by long and slow effort, wrought in the educational system were the foundation of the new and finer law school of today.

* * * *

The Early Reforms

By 1923 the Law School at Osgoode Hall was ripe for a number of reforms and they were not long in coming. Mr. Falconbridge was

¹⁸ Montgomery, *Problems of Legal Education*, (1934) 12 CAN. B. REV. 481.

appointed Acting Principal in September of that year; by October the Benchers submitted an estimate of the 1924 expenses for the Phillips-Stewart Library which was over four times the expenses of the previous year (\$1,800 as against \$400.76 for 1923).¹⁹ The Legal Education Committee proved sympathetic to a reorganization of the law school and established a special committee on that very subject. Mr. Falconbridge sat with the Committee on several occasions and the Committee subsequently recorded in its report that it had "in substantial measure availed itself of his special knowledge of the situation".²⁰ Mr. Falconbridge's "special knowledge" included information gathered on recent visits to both the Harvard and the University of Michigan Law Schools and his findings can be taken to have had considerable influence on the Committee's report. This report, when presented to Convocation in March of 1924, indicated that a distinctly new attitude towards legal education was abroad. The law school was to be given the official name of Osgoode Hall Law School. The School sessions were to be lengthened and the extra classes gained were to be used for an expanded treatment of the existing curriculum as well as a study of new subjects. The teaching staff was to be increased, most notably by a second full-time member, and the system of examination of the students by independent examiners appointed by the Law Society was to be discontinued. More significantly, the staff was encouraged to try new teaching methods. The Committee found that previously students had taken little share in their legal education and some were even passing examinations by virtue of "reading typewritten notes purchased from their predecessors"! The report continued:

"Your Committee believes that, to some extent, the old system of lecturing might advantageously be replaced or supplemented by some method of instruction which will demand a larger share of intellectual effort from the students, and that the teaching staff should be encouraged to try experiments with this object in view. In some subjects, at least, it would seem worth while to substitute for ordinary lectures the discussion of cases by the students under the direction of the lecturer."

This new spirit of freedom met with Convocation's approval. The recommendations of the report were adopted and Mr. Falconbridge was formally made Dean of the newly named school. As Dean he was given "supervision and general direction of the law school" but his decisions on curriculum and lecture hours and schedules were always "subject to the approval of the Legal Education Committee."²¹ He was, however, invited to sit with that Committee. It is perhaps a measure of Dean Falconbridge's influence in this report that the "case method" which the Committee had recommended be adopted in March of 1924 had already been implemented in the Dean's first year Contracts class.²²

In the fall of 1924 the Law School got its second full-time faculty member. This was Donald Alexander MacRae, M.A., Ph.D., a former

¹⁹ P.C. October 1923.

²⁰ P.C. March 1924.

²¹ P.C. April 1924.

²² P.C. May 1924.

Dean of the prestigious Dalhousie Law School and a former Chairman of the Legal Education Committee of the Canadian Bar Association; a man who, as one commentator put it, had "shewn his strength by accepting a position junior to his old friend, Dean Falconbridge".²³ Dr. MacRae is remembered by former students as being a remarkable man, a lecturer of fluency, force and unusual vividness. He was a classicist by training but he took a profound delight in matters of legal procedure. He was also a legal historian and his two interests merged in the axiom from Maitland that he never tired of repeating: "The substance of the law is concealed in the interstices of procedure". Beyond all this, however, he was a kindred spirit to Dean Falconbridge on the matter of reform of legal education. His period as chairman of the C.B.A. Committee on Legal Education had been marked by a series of forceful and sophisticated reports on the subject. It was confidently and generally expected that if he and Dean Falconbridge were "given proper opportunity, they [would] in time place the law school at Osgoode Hall in the position which it should occupy".²⁴

The reforms of 1924, though in their way sweeping, were just a beginning. Dean Falconbridge had larger and more radical plans for the rejuvenated Law School, and year by year, item by item, he brought these plans to fruition. In February of 1925 Convocation was told that a third full-time member of staff was "urgently needed". Sydney Earle Smith (who was in later years to become the President of the University of Toronto and the Minister of External Affairs) was subsequently hired. By the following spring (June 1926), the Benchers were told that it was "essential to the real efficiency of the School that the staff should be further increased in the future". This new increase would ease the teaching load on the staff and increase personal contact with the students ("which is so important an element in effective teaching"). It would also allow the staff "to make such contribution to the science of law as may be reasonably expected of a law school". Obviously a new standard of legal education was evolving. It is not certain how sympathetically this latest request for an addition to faculty was received. By January of 1927 an eminently qualified candidate for the proposed new full-time position had been found and Dean Falconbridge presented Convocation with a long and persuasive report as to why he should be hired. The candidate was in fact a recent and brilliant graduate of Osgoode (94.5% in his third year examinations) who was even then taking a Doctorate in Law at Harvard University. His name: Cecil Augustus Wright. He was hired as a full-time teacher for the coming fall at \$2,400 per annum.

The lecture schedule was also constantly under review at this time. In October of 1925 the Legal and Literary Society had petitioned the Legal Education Committee on behalf of the students to have the

²³ Henderson, *supra*, note 5, at 371.

²⁴ *Id.*

On his retirement Principal Hoyles was given a pension of \$6,000 per year for life. Principal Falconbridge was paid \$6,000 per year to succeed him. When Dr. MacRae was hired he was also paid \$6,000 and Dean Falconbridge's salary was raised to \$7,000.

afternoon lectures, which were held at 2.10 and 4.40 p.m., moved to 10 a.m. in the morning. The petition was granted and the change took effect as of the spring of 1926. This change would undoubtedly have pleased the staff but they themselves were after larger game. Dean Falconbridge was requesting almost annually that the lecture hours be increased. Indeed, in June of 1926, he went so far as to suggest that the first year students be released from their office duties so that they could devote their whole time to the Law School. This suggestion was not well received but the Legal Education Committee did consent to lengthen the Law School sessions so that they went from the beginning of September to the middle of May. The record of the total hours of lectures in these years tells the story of the Dean's labours in this matter. In 1923-24, 621 hours of lectures were given to all three years. This had risen to 762 by 1924-25, 789 by 1925-26 and 852 by 1926-27. It was proposed that the total reach 900 hours by 1928²⁵ and when that number of lectures was reached it remained constant for the major part of the Falconbridge period.

The real force of reforming efforts in these years was, however, directed not to increases in staff nor changes in the lecture schedule but towards a raising of the standards of admission to the Law School. The interest in raising the preliminary requirements for legal education was at this time Canada-wide and the Canadian Bar Association was bending all its efforts towards the establishment of a university degree as the basic admission standard throughout the Dominion. In the reforms of 1924 the minimum admission standards in Ontario had been raised from Pass Matriculation to Upper School Matriculation (Grade 13). At the same time, however, New Brunswick, which had had the lowest admission standards in the Dominion, changed its requirements so that it, like Manitoba, Alberta and Nova Scotia, required at least two years of university before admission to law school. British Columbia, Saskatchewan and Prince Edward Island were all demanding one year of university studies as a prerequisite so that even if Ontario's Honours Matriculation were charitably gauged as two-thirds of one year in Arts (and the Canadian Bar Association so rated it),²⁶ the Law Society still trailed the Dominion in admission standards. In 1924 the Legal Education Committee of the Canadian Bar Association used all the force at its disposal to gain a raise in Ontario standards. The Dean was working towards the same end and when in May of 1926 the Law Society adopted his recommendation that two years of university training be a prerequisite to legal studies, the Editor of the *Canadian Bar Review* publicly

²⁵ P.C. June 1929.

The Dean himself increased his workload with each change in schedule. In 1922-23 Principal Hoyles gave 132 lectures and Falconbridge gave 167. Nine part-time lecturers gave from 85 (Mr. Bradford and Mr. Lang) to 8 (Mr. Duncan) lectures apiece for a total of 655 lectures (see Proceedings, May 1923). In 1923-24 the new Dean gave 198 lectures (see Proceedings May 1924) and by 1926-27 he was giving 216 lectures. In the latter term Dr. MacRae gave 175 lectures and Mr. Smith gave 231 lectures.

²⁶ (1925) 10 PROC. OF THE C.B.A. 223.

congratulated him "for the successful issue of his labours in that behalf."²⁷

The rejuvenation of the educational process proceeded within the School also. In 1929 Dean Falconbridge was able to report to an American colleague that, "at Osgoode Hall the case method is used exclusively in the following subjects: contracts, torts, personal property, sale of goods, trusts, agency and partnership, wills and administration of estates, equity, conflict of laws."²⁸ It is not certain, however, just how the "case method" was used by the Dean or his colleagues. Another American commentator reported that, "There is little apparent prospect of its being developed to the extreme exemplified in many American schools."²⁹ Former students give varying reports as to the way cases were used; some recall "lots of class discussion", while others remember the method as being more one of "lecturing through the cases".

Full development of the case method was, of course, impeded by a lack of Canadian materials suitable to case method teaching. In 1926 the Canadian Bar Association characterized this as "the most pressing problem in the law schools of the Dominion at the present time" and noted that American and English materials were "entirely unsuitable".³⁰ The matter was slowly being remedied, however. Individual professors were indefatigable in gathering, arranging and publishing, in one form or another, materials for their own courses. When J. J. Robinette joined the full-time staff in 1930 he had a casebook prepared for both of the courses he taught (Property and Mortgages) by the time school began that fall. By 1931, out of the 22 subjects taught at Osgoode, 17 used materials prepared by Osgoode faculty members.

The case method, it should be noted, was not adopted without difficulty and its use was never free from controversy. It was thoroughly suspect in the eyes of many practitioners and students complained, as they do now, that it denied them any coherent view of the law. Not even the professors were wholly convinced of its value. Dr. MacRae for one had advised that it be used sparingly.³¹ Its adherents were, however, committed to it with rare vigour and were positively eloquent on the intellectual benefits to be gained from its use. One problem was that truly effective case method teaching was slow and required as a prerequisite a good deal more preparation time and classroom time than either the students or the School had at their disposal. Thus it was that in subsequent years new advances in teaching methods went hand in hand with requests that the Law School be made full time. A full-time Law School presupposed a major alteration in the system of articling. The debate continued.

²⁷ (1926) 4 CAN. B. REV. 329.

²⁸ Lambert, *The Case Method in Canada*, (1929) 39 YALE LAW JOURNAL 1.

²⁹ A. Z. Reed in his report on Legal Education for the Carnegie Foundation. Quoted in Lambert, *supra*, note 28 at 9.

³⁰ (1926) 11 PROC. OF THE C.B.A. 362.

³¹ (1923) PROC. OF THE C.B.A. published in (1923) 1 CAN. B. REV. 671.

And what of the students in these days? The records indicate little. We know that in June of 1926 the Legal and Literary Society was given \$2,000 by the Law Society but we do not know how it was spent. The students could and did act in concert to petition the Legal Education Committee for changes in the lecture or examination schedules but beyond that their activities are unknown. Indeed, in a system where the morning was spent at lectures, the afternoon at an office, and the evening, hopefully, studying, it is a miracle that there were any student activities at all.

The Depression

The important educational reforms of the 1920s were to prove impermanent. With the coming of the depression and the grim thirties the world, the legal profession and inevitably legal education, entered a new period of uncertainty. The pressures on the profession were enormous; the overcrowding that was worrisome in the twenties became critical as business slumped. Junior barristers were a glut on the market; their services could be had for as little as \$10 a week. Solo practitioners multiplied and the competition for a \$20 real estate fee (one such deal a week was more than sufficient) was vicious. At the very bottom of the troubled legal hierarchy was the articulated student. If there was little work for lawyers there was less for him, and there was absolutely no money. Someone had to take him under articles, however, or he could no longer be a student. Articling had by then lost all justification. Bound as he almost invariably was, to a single practitioner (some of the large firms refused to take students at all), the student could, at best, get a narrow acquaintanceship with a few legal chores, at worst, he was a nuisance.

The Benchers' reaction to the distressing problems that faced them can be most kindly described as one of retrenchment. A return to the tried and seemingly true old ways was indicated. The university standard of admission was the first of the reforms to be dropped. The Calendar of 1931-32 announced that after September 1, 1932 the minimum standards for admission as a student-at-law would once again be Pass Matriculation plus either Honours Matriculation or completion of first year of university. Men who were close to the Law Society in these years have suggested that the Benchers brought about this change by a very close vote and on the grounds that the student who was less favoured with worldly goods than his fellow students was being unfairly discriminated against. There is no doubt that at a time when scholarships were very scarce and Government Bursaries and Loans non-existent, an impecunious student was hard put to finance his education. (The usual method was for such a student to borrow money from a wealthy friend of the family—the banks, of course, would offer nothing. The student's burden on graduation was apt to be crushing, especially if he had pursued a professional education such as medicine or law.) The Benchers' concern was then undoubtedly sincere and their intentions honest.

Some shadow was cast on the Benchers' motives, however, when a year later, and to the general surprise of the profession, student fees were raised. The Calendar for 1933-34 states that a student must pay \$100 rather than \$50 to become a student-at-law and begin articling. His tuition fees at the law school advanced from \$100 to \$150 a year.³² This rather incongruous action was not wholly arbitrary. The *Obiter Dicta* (the Osgoode student newspaper) of May 1933 reported that "the percentage of University graduates at Osgoode Hall Law School at present is 89.6 with 10% of the students two year men. Since the lowering of standards on May 12th 1932 the percentage of university graduates has fallen to 49.28."³³ Assuming that the fall in percentage was due to a rise in the number of non-graduate articling students, the already crowded profession seemed due for another influx of poor and ambitious junior barristers. The Legal Education Committee later said of the fee increase that it had "served to deter some persons from entering the Society"³⁴ and it is hardly unjust to assume that that was its true and perhaps only purpose.

The changes in admission requirements and fees, though inept and somewhat self-defeating, left the basic philosophy of the reformed legal education intact. The movement for retrenchment was to demand next that the philosophy itself be abandoned. In 1934 a Special Committee of Benchers was appointed to investigate legal education. The creation of the Committee occasioned much interest and in the course of its sittings it heard a number of submissions.

It is well to remember that legal education was a matter of "burning interest" for the profession at the time. The role played by the Canadian Bar Association with respect to admission standards has already been documented. In 1932 the Legal Education Committee of the C.B.A. had commented apropos Osgoode's lowering of standards that "the standard of legal education ought not to be lowered but, on the contrary, it should be strengthened".³⁵ Its real interest in these days was, however, directed towards articling provisions. As far back as 1918 the Committee had adopted the view that:

"Experience has demonstrated completely and entirely that if you are content to acquiesce in that dual system, law school attendance and office attendance running concurrently, you will not get good results either out of the law school or out of the office. That I personally . . . look upon as absolutely fundamental."³⁶

In subsequent years the wording softened but the position remained the same. The general feeling was that a one year articling period should be antecedent to a three year full-time law course. Indeed, the

³² Wilson, *Legal Education in Ontario*, Vol. 13 (1935) 13 CAN. B. REV. 366.

³³ *Quoted by* Cronkite, in *Legal Education—Which Trend* (1935) 13 CAN. B. REV. 379.

³⁴ P.C. Jan. 1939.

³⁵ 1932 17 PROC. OF THE C.B.A. 150.

³⁶ Dr. R. W. Lee, Chairman Legal Education Committee C.B.A. *Quoted in* (1934) 12 CAN. B. REV. 153.

Chairman of the 1934 Special Committee of Benchers, Mr. M. L. Ludwig, had endorsed precisely this view in 1931.³⁷

Interest in the Law Society Committee's work went well beyond the academic circles of the Bar Association. The students then at Osgoode showed so much concern that the Benchers asked them to submit a brief. The students responded with perhaps the most thorough and sophisticated submission that the Committee received. Their attack on the educational system as it then stood was devastating. They pointed out that the articling period, especially under the concurrent system, was futile. Students got little useful experience and, in most cases, no money. In fact, about 16% of the students did not bother working in offices at all. The system could only work well if a student got into a good office; but good offices were scarce, paid nothing, and positions in them were open mainly to students with influence. The students recommended that the concurrent system be abolished and replaced by a three year full-time law course with one year of articling antecedent.

The recommendations did not stop there. The lowering of admission standards was criticized. The students themselves were the best judges of whether they could afford university training and they had voted overwhelmingly in favour of the university degree standard of admission.³⁸

The students' ideas on teaching methods were equally forthright. They praised the "case method" of instruction extravagantly, regretting only that the teachers who had refused "to bow to the restrictions imposed upon them by the present system" and continued to use the method were "tending to fall into disfavour among the profession" even though they were "the very men who were keeping Osgoode Hall alive as an institution of learning".³⁹

³⁷ (1931) 16 Proc. of the C.B.A. 214.

³⁸ "At the first general meeting of the students of Osgoode Hall one person voted in favour of the present standard, ten voted for two years in a University, and fifty voted for a University degree. The Committee favours a University Degree." Carrick et al., *Education for the Bar: Report of the Special Committee of Students of Osgoode Hall* (1934) 12 CAN. B. REV. 144 at 146. Since there were well over 300 students at Osgoode at this time there is no way of telling how representative the vote was. Indeed it is impossible to say how representative any of the committee's opinions are. The committee had been appointed by the Legal and Literary Society and though it had received some concrete submissions from the students the report was of its own opinions.

The students' report did raise interest outside of the school. One Toronto barrister published a vitriolic reply to the report in which he suggested that the students' ideas were based on "Idealism of the most ultramundane nature". To the students' plea for more intellectual stimulation in their legal studies he replied, apparently in all seriousness, "Who ever heard of a student . . . that attacked his studies with a vigorous mental attitude? 4 FORT. L.J. 120.

It might be mentioned that Mr. D. D. Carrick who was primarily responsible for the report had a rather unique cause for interest in reform in legal education. He had had a brilliant academic (and athletic) career at several universities and held an LL.B. from Harvard. His legal studies meant nothing to the Law Society, however, and it was ruled that he could not practice in Ontario without three years' study at Osgoode.

³⁹ Carrick, C. C., *supra*, note 38, at 158.

The students made one other noteworthy recommendation:

"That no change be made in the hours of lectures, and in particular it is undesirable to revert to the old system of holding lectures in the afternoon."⁴⁰

The Benchers' Committee entertained other submissions also. The York Law Association, other County Associations and the Lawyers' Club all advocated that a university degree be the single standard for admission to the Law School. The Dean and Faculty of the School were of the same opinion.

In the light of this chorus of pleas for constructive reform, the Benchers' Report seems incomprehensible. When first published it must have been shocking. The suggestions that the university degree be the standard of admission were set aside and the 1932 minimum standards retained. The Law School's approach to education was criticized. "The tendency has been to emphasize unduly the academic training at the expense of efficient office training".⁴¹ The Committee, whose chairman (M. L. Ludwig), had pronounced concurrent office service undesirable not three years earlier, recommended that afternoon lectures be reinstated so as to allow more time for office work. It was also suggested that the curriculum be shortened and the use of the case method re-examined.

"The advantage of a study of authoritative text books and the orderly arrangement of general principles of law should not be unduly minimized."⁴²

"The further suggestion is made that the curriculum and time table for lectures should, before adoption, be submitted to the Legal Education Committee for approval and that the organization, methods of study and examinations be at all times under the control of the committee. The responsibility resting in the Benchers with regard to Legal Education cannot be discharged properly without the exercise of a real control over the work of the Law School."⁴³

The response to the report was immediate. The Osgoode Hall Legal and Literary Society passed a resolution, with 96% support, against the reinstated afternoon lecture.⁴⁴ Students wrote articles in the *Canadian Bar Review* deploring the retention of the Law School admission standards and pointing out also that the Benchers' defence of practical training was simply impractical. There were even then more students than offices to take them and Osgoode being the only accredited Law School in the Province this situation seemed chronic.

More perceptive writers regretted not so much the archaic recommendations as the frame of mind that they indicated. As the Dean of the University of Saskatchewan School of Law put it:

⁴⁰ *Id.* 160.

⁴¹ Ludwig, *Report of the Benchers of the Law Society of Upper Canada* (1935), 13 CAN. B. REV. 347 at 353. As C. A. Wright was later to point out this was an odd charge indeed to be made "concerning a Law School which had never been part of a university, and which had never offered full time instruction to students". See, *Law and The Law Schools* (1938) 16 CAN. B. REV. 579.

⁴² *Id.* 355.

⁴³ *Id.* 356.

⁴⁴ (1935) 13 CAN. B. REV. 357.

"It is submitted that the attitude of the Committee towards legal education, as expressed in this report, is unmistakable. It is an attitude which not only emphasizes the matter of technical craftsmanship in litigation and office routine—it makes this craftsmanship an exclusive and narrow end in itself.⁴⁵

"If [this] trend be followed one might make the prediction that thirty or forty years from now the lawyer will be regarded as merely an odd survival, the priest of a discarded religion."⁴⁶

To all outward appearances the progressive trend in legal education received a severe set back in 1934. The Committee's recommendations were duly implemented, students attended the Law School for an hour in the morning, went off to such work as they could find for the afternoon and (if they had the strength, and many students recall that they did not) returned to the School for coffee in the common room and a lecture at 4.40. The pre-Falconbridge regime had been re-established. Little talk of educational reform is found in the subsequent years. The Canadian Bar Association ceases to note the topic in its proceedings; the Dean's annual reports to the Law Society are concise and perfunctory. It was almost ten years before a new impetus for change was to develop.

It is perhaps, however, worth questioning just how seriously the Benchers' recommendations did affect the education given at Osgoode. Though students could study law with only a high school education very few in fact did. In 1937, 92 graduates and 9 matriculants began legal studies. In 1939 the ratio was 110 graduates to 8 matriculants. Much the same was true of the instruction given. As a barrister, who was a student at Osgoode both before and after the Report pointed out, most of the changes demanded were petty. The Benchers had asserted their control over the school and demonstrated their disbelief in full-time legal studies but, this having been done, the teachers were given complete freedom (or were allowed to take complete freedom) to teach what they wanted in the way they wanted. The Legal Education Committee did not make the school and its ineptitude was not going to destroy it. Many observers are willing to suggest that Osgoode was a good school in spite of the Law Society. Its full-time faculty were uniformly excellent and the standard they set was achieved by some, though not all, of the part time lecturers. Former professors recall that Osgoode students were equal to the students of any other school they taught. Former students point out that even in the mid-thirties, there was a good deal of intellectual ferment in the student body. "Things [such as debating and writing—especially for the *Obita Dicta*] were always going on." In short, in one faculty member's phrase, Osgoode was not a "bucket shop".

The Benchers and the Legal Education Committee for their part lent their efforts to making practical the system they had bound themselves to. The articling program was changed slightly in that after 1935 a matriculant student spent the first year of articles at the Law

⁴⁵ Cronkite, *supra*, note 33 at 376.

⁴⁶ *Id.* 383.

School, the next two years with his office, and returned to the school for his final two years. Various attempts were made to give the articling period more meaning. The Law School Calendars after 1937-38 included a fairly lengthy essay on Office Training and the advantages that the student was expected to derive from it. A rather ambitious 14-point list of matters "in respect of which the student may gain practical experience" was included (everything from correspondence to preparation of cases for trial and conduct of an action at trial), as was the more realistic homily that "The student should keep some law book on hand for slack times" (elementary texts or biographies of great lawyers were suggested).

The evidence indicates that there were plenty of slack times and a fair number of slack practices also. Both student and solicitor were still required to swear that the articling duties had been duly performed before the student could be called to the Bar but, in point of fact, the affidavits were little more than an empty formality. Students would "absent themselves from service" in order to study for examinations, or because of illness, or even in order to take a job that might finance their studies and would then swear faithfully that they had done none of these things. Students would move from one office to another without securing an assignment of their articles. The Benchers winked at these deceptions.

"The Law Society has overlooked all irregularities in service and overlooked the irregularities in the students' affidavits and the solicitors' certificates and treated them as a matter of course."⁴⁷

In an attempt to give more reality to the articling requirements, a system of oral examinations of the articling students in the first and third years of their terms was used. A board of three eminent practitioners interviewed each articling student for about ten minutes then graded him with an A, B, C, or "no rating". Typically the majority of students fell into the last two grades. Invariably the first year students outranked their jaded third year colleagues. An annual report was made on the oral examinations and, though the examiners clung tenaciously to their belief in the articling system, they were hard put to disguise its weaknesses. In 1939 they reported that "owing to a general dearth of work the student is not usually asked to assume much responsibility". Indeed, they were generally unfamiliar with the preparation of abstracts of title, with litigation practice, with mining or taxation law and with the drafting of documents.⁴⁸ A few years later it was still true that "In many offices the student has not any great opportunity of doing important work"⁴⁹ In January 1942 the Benchers adopted a report which was intended to tighten up the articling system. Students who wished to earn money could get permission to do so from the Benchers; leaves for illness or studying were formalized and transfer of articles regularized. The system of oral examinations was given teeth by forcing students who got "no

⁴⁷ *P.C.* Jan. 1939.

⁴⁸ *P.C.* May 1939.

⁴⁹ *P.C.* April 1941.

rating" to be re-examined. In May of that year some students took the Legal Education Committee at its word and applied for leave to engage in paying jobs during the summer. The request was denied. The evidence indicates that after this students sought and gained "offices of emolument" with no more regard for the new regulation than they had shown for the old; and in due time they signed their affidavits just as blithely.

It must be remembered that for all of its academic reverses the School did grow physically in these years. In 1939 the School gained its first addition since the late nineteenth century. The addition was to provide new library facilities, faculty offices and an assembly hall. The year in which the addition was built was a difficult one in a number of ways; not only were the lectures disrupted by the confusion of construction but also the commencement of the term had to be delayed two weeks because of a polio epidemic. Not even the much needed new building was free from criticism, however. E. R. Arthur noted later that, "In 1844, 1857 [years of previous renovation to Osgoode Hall] the Society lacked a 'master plan' that would indicate the most desirable direction of its future growth. The Hall would seem to its admirers to be worthy of something better than ad hoc building committees formed in time of emergency."⁵⁰

The War

With the coming of the war, legal education in Ontario entered a new phase. In a sense some of the pressures that had troubled it in the thirties were released. Articling students were less numerous and consequently had less trouble finding suitable offices. Of course, there were new problems to be dealt with. Students might volunteer or be called up for war service at any point in their legal studies. Men who attended Osgoode in these years recall how "great chunks" of the student body would be found missing some mornings. Faculty members also went to war. When Mr. Morden and Mr. Edge (both part-time lecturers) went on active duty Dean Falconbridge and Dr. Wright split their absent colleagues' classes between them. For Osgoode, as for the world, it was a time of uncertainty. Attendance dropped to probably the lowest in the school's history, and with the coming of the peace, rebounded to new and, at the time, unimaginable heights. The following figures illustrate this development:

STUDENTS AT OSGOODE

	1939-40	1940-41	1941-42	1942-43	1943-44	1944-45	1945-46
1st year	112	85	70	35	33	57	300
2nd year	109	80	60	54	26	32	96
3rd year	104	108	68	48	50	27	49
	<u>325</u>	<u>273</u>	<u>198</u>	<u>137</u>	<u>109</u>	<u>116</u>	<u>445</u> ⁵¹

⁵⁰ Arthur, *The History and Architecture of the Fabric*, in C. H. A. JOHNSON, *THE HONOURABLE SOCIETY OF OSGOODE HALL* (Toronto, 1952) 58.

⁵¹ *P.C.* Sept. 1945, Sept. 1946.

In an odd way Ontario legal education ceased to be simply an Ontario matter during the war years. With so many barristers and students fighting in Europe, the Law Society concerned itself first with keeping these men abreast of legal developments during the war and then with preparing them for re-entry into the profession on their return. Both jobs were performed with a skill that won unreserved praise for the Benchers. A newsletter was drawn up and sent to Ontario barristers and students overseas. Prisoners-of-war who requested that they be allowed to continue, or even begin, legal studies, were sent the necessary text books and, in due course, the requisite examinations too. Indeed, it was reported in 1943 that two Osgoode alumni had constituted themselves "the teaching staff of our law school at Oflag VII B" (a German prison camp).⁵² When "the boys came home" the Law Society bent, twisted, and set aside rules to let them resume their education as quickly as possible and as nearly as possible at the point at which it had been broken off. Those who were barristers when they went to war returned to find a four-week refresher course established to sharpen their unused skills and a rather informal placement service to help them in finding positions. Veterans who attended the refresher course were presented with printed lectures which summarized the then existing state of the law in the major areas of practical concern. These lectures were so useful that they became the handbooks for the entire profession and were consulted regularly by veterans and non-veterans alike.

The Law School itself did not stagnate in these years either, despite its drastic drop in attendance. The Legal Education Committee report of 1935 had served to freeze the Law School curriculum by holding to two hours per day the number of lectures that could be given. The students were well aware of this handicap and realized that they were at a disadvantage in entering professional life with no training in such subjects as Municipal Law, Tax Law or the Succession Duty Act. They were also aware of the deficiencies of some of their teachers. It had been traditional for the Crown Attorney of Toronto to lecture in criminal law but this left much to be desired.

"A course in criminal law which devotes approximately two-thirds of its time to the exposition of the origins of the Code, one-third of its time to the repetition to the point of satiety of some two score specific sections of the Code and no time at all to an examination of the functions of the Code may be supposed to fill and its success as an instrument adapted to its environment leaves much to be desired. . . . [N]o attempt at objective evaluation is made or, in fact, permitted."⁵³

In short, the new impetus for reform had come.

The Legal Education Committee set up a committee to study the Law School curriculum and Dean Falconbridge submitted a report to it in which the addition of new subjects was recommended. It was first of all essential, though, that the lecture hours be changed. Dean Falconbridge's submission to the Benchers on this point is one of the most forthright comments ever attributed to him:

⁵² *P.C.* April 1943.

⁵³ *Legal Education in Ontario* (1940) 10 *FORT. L.J.* 136.

"At a recent meeting of the Legal Education Committee I ventured to draw [the Law School] timetable to the Committee's attention and to recommend that the decision made ten years ago to limit the lectures to the hours of 9 a.m. and 4.40 p.m. should be reconsidered. I am not overlooking the importance of office practice as part of a student's training, but, as I explained to the Committee, I am convinced that the present limitation as to hours of lectures handicaps the law school work to such an extent as to constitute a major defect in the system of teaching law in Ontario."⁵⁴

The irony, of course, was that in 1945 he was pleading again for a concession that he had won shortly after taking office in 1923.

The concession was regained; the lecture hours returned to what they had been in 1934. New subjects were added to the curriculum; Taxation and Administrative Law in 1944 and Labour Law in 1945. The lecture hours rose from a total of 900 in 1944 to a total of 1044 in 1945.⁵⁵

More than the schedule was changing however. Dr. MacRae (who in his years of teaching had inspired many of Osgoode's most brilliant students, including C. A. Wright, J. S. D. Tory and V. C. MacDonald, to do graduate work in law) retired with a lifetime pension from the Society in 1945. His successor was Mr. Bora Laskin (now, of course, Mr. Justice Laskin). Mr. Laskin's hiring had some unusual features. He left a position with the law faculty of the University of Toronto to come to Osgoode. He came, however, with the blessing of Toronto's Dean Kennedy and in the fairly distinct expectation that some sort of *rapprochement* would be arrived at between the two Schools in the not too distant future. This idea was to occur to others also. In 1947, at the suggestion of Premier Drew, five members of the Law Society met with five members of the University of Toronto's Committee of Legal Education, "To consider the possibility of improving legal education under some plan of effective co-operation between the Law Society of Upper Canada and the University of Toronto".⁵⁶ New ideas in legal education were abroad; major changes were evidently in the offing.

In many respects, however, the changes were coming too late. With the return of the veterans Law School admissions soared. Attendance at Osgoode virtually quadrupled from September of 1944 to September of 1945. Almost immediately the archaic system that the Law Society had spent so much effort in preserving began to fall apart. Every law student was still obliged to article to a solicitor before attending lectures; but where were the willing solicitors to be found for so many students? In October 1945 there were 33 first year students, 10 second year students and one third year student with no articling office⁵⁷ and more veterans were on the way.

The Law School facilities were similarly strained. First Convocation Hall was pressed into service. By 1946 arrangements had to be made with Metropolitan United Church so that the church hall

⁵⁴ P.C. May 1944.

⁵⁵ P.C. Sept. 1945.

⁵⁶ P.C. Jan. 1947.

⁵⁷ P.C. Nov. 1945.

(on Queen Street about four blocks east of the School) could be used for second year classes. A wall was demolished between what had been the second and third year lecture rooms so as to make another large lecture room for the third year class of succeeding years. Even with these alterations the time came when for the first time in the school's history the different years had to use the same classroom at different hours.

Newly appointed professors found themselves lecturing, microphone in hand, to well over 300 students. As one was to recall later, "We weren't teachers, we were performers—Chattanooga orators". The new students were not difficult to deal with. They were mature and serious generally and, on the whole, cordial and considerate to the professors who, in many cases, they outranked (in the military sense of the term) and who were often their juniors in years.

Some of the returned soldiers were displeased by the fact that veterans of the Second World War were given no concessions in the academic standards that they were forced to meet. In contrast to the very loose requirements set for veterans of the First War, the Law Society in these years was willing to alter its administrative provisions (by, for example, allowing a veteran to return to his legal studies in mid-term) but not its standards of performance on examinations. The faculty of the Law School were in accord with this policy; Professors such as Laskin and Wright became notorious for the number of failures given in their examinations.

The examinations may have created more problems for the faculty than for the students. The flood of papers to read and evaluate necessitated the hiring of Toronto barristers to aid in the marking. One such "marker" recalls that he had bursitis in both elbows before he finished his job.

Under this torrent of students the library, which had never been large, was immediately rendered inadequate. In 1946 the Law School set up its own mimeographing office so as to get more materials into the course of study.

The real casualty of these years was, however, the concurrent articling system. In 1945, the first year students had to ask for special assistance in their office training. A group of young Toronto barristers responded by volunteering to lead discussion sessions on Practice in groups of 25 every Monday night. These groups were so successful that by 1947 the Legal Education Committee recommended that they be made compulsory and, for first year students, be substituted for office service during the Law School term.⁵⁸ Inevitably a full-time law school was evolving.

The first hints of this most significant of reforms were to come at the very end of Dean Falconbridge's tenure. There can be little doubt that the Dean had desired for over 20 years that Osgoode become a

⁵⁸ P.C. June 1947.

full-time Law School. His every change had moved towards that goal just as surely as every reverse imposed by the Benchers had moved away from it. Why was the fruit of Dean Falconbridge's labours to fall, as it were, into other hands? People who have studied under him or taught with him recall him as being essentially a gentle and contemplative scholar, a man of unusual abilities, deep capacity and rare charm. He was not, however, a good administrator and, above all, as one of his admirers put it, he "had no stomach for a fight". One can speculate that his views on legal education had been presented time and again to the Law Society but had never been pressed in any unseemly manner.

By 1948 the Dean, in a colleague's words, "had had enough". The Law Society was advised in January of that year that Dean Falconbridge had expressed his "urgent desire to be relieved of the office and duties of Dean forthwith".⁵⁹ Cecil Augustus (Caesar) Wright was appointed to succeed him in March of 1948 while he, now Dr. Falconbridge, an aged and world famous scholar, stayed on as a teacher.

At this point the helm passed to more forceful hands.

⁵⁹ *P.C.* Jan. 1948.

CHAPTER IV. CRISIS AND RECONSTRUCTION

1. *Cecil Augustus Wright, 1948-1949: Crisis*

The long years of the Falconbridge administration were not, in educational terms, unprogressive. Necessary reforms did occur from time to time but because of the reactionary attitude of the Law Society of Upper Canada they were slow in coming and often impermanent. By 1948 Ontario legal education was very far from reaching the standards set by Harvard or Yale or even those achieved by Nova Scotia, Quebec and Saskatchewan. In appointing "Caesar" Wright as the fourth Dean of Osgoode Hall Law School the Law Society placed the fortunes of that institution in the hands of a man more impatient for reform than the diffident Dean Falconbridge. The change in administration suited neither the Law Society nor Wright and ended in less than a year's time with perhaps the most famous event in Osgoode's history—the resignation of Dean Wright and his full-time faculty.

The 1949 resignation lifted the lid of discretion from a long simmering controversy between Dr. Wright and the Benchers. The ensuing struggle bathed Osgoode Hall in unwelcome and unflattering publicity, displayed all participants to their worst advantage, forced the evolution of the University of Toronto's tiny Faculty of Law into a major Law School and ultimately resulted in the first substantial reforms in Ontario legal education in over sixty years.

Dean Wright's resignation was a public event just as its aftermath was a public conflict. The blows dealt and received on either side were followed avidly by the newspapers. For a few months at least the whole question of legal education was taken out of the realm of obscure academic discussion and made a matter of public concern. As is the nature of public events, however, the resignation symbolized the conflict but did not simplify it; the ensuing debate centered on the participants in the struggle and not on the problems struggled with. When the dust had settled, all that was clear was that it would take far more than publicity to solve the difficulties that beset Ontario's system of training for the practice of law.

At the time of the resignation a multitude of problems faced Osgoode Hall Law School and its governors, the Law Society of Upper Canada. To the public eye the issue central to the crisis was what form legal education at the Law School should take and what role the articling system should play in the educational process. More perceptive observers saw that a genuine conflict over questions of academic freedom, of teaching methods, and even of the purpose of legal education, divided Dean Wright from the Benchers. In another perspective, however, the main problem was seen by some commentators as being who should control legal education in the province. Was the Law Society of Upper Canada to remain the sole body with

power to educate lawyers and, if so, was the Legal Education Committee or the Dean of the Law School to have primary authority in the exercise of that power? Yet another problem (one barely mentioned at that time) was who should bear the cost of legal education. The years were long past when the training of law students could be considered a lucrative undertaking yet as long as the Law School was owned and operated by the Law Society it was considered a private institution and ineligible for government support. With both costs and enrolment rising, critical financial problems were in the offing.

The factions that warred over the solution to these problems were led on the one hand by the Benchers of the Law Society and, on the other, by Caesar Wright. The Benchers represented then the senior generation of the province's barristers. It should be remembered that at this time the profession itself was on the whole older than it is today. An influx of new blood, a steady increase in admission of young men to the bar, came after the 1949 crisis. In these years an already conservative profession was being led by its most tradition-bound element. Garshom Mason, the Treasurer of the Law Society, is remembered even by men of his own age as being very much a member of "the old school".

Furthermore, the Benchers were much more remote from the members of the profession than they are today and much less subject to influence by them. Though many members of the bar, especially the younger practitioners, disagreed with the stand taken by the Law Society, their views on the matter were solicited only after, not before, the crisis.

The Benchers who decided which ideas on legal education would be followed in Ontario were, by and large, men trained in the articling system and convinced of its values; men neither familiar with, nor appreciative of, academic legal studies. These were also men charged with the heavy responsibility of certifying to the public at large that the students who graduated from the Law Society's School (and were then, without further examination called to the bar) were competent to practice law. This duty was taken very seriously and was to be neither shirked nor shifted. In discharging it, the Benchers of the Legal Education Committee were resolved to exercise their own judgment as to how competence was to be achieved and not to defer to either experts or "academicians" in the forming of that judgment. For the Benchers the paramount fact was that whatever a lawyer's academic qualifications might be his mettle would be initially tested in the intricate practical problems of conveying property or settling an estate.

In 1947 Mr. R. M. Willes Chitty, who was to be one of the major figures in the later conflict, defined the Benchers' position in this way:

"The real function of the Law Society is essentially [the] qualifying of men already reasonably educated to practice law, or rather . . . to exercise the privileges of the profession in the service of the public in the

practice of law. . . . We thoroughly sympathize with the educationalists. They know no other standard than the academic and by and large the world-beating student will probably be the quickest to learn to practice law, though the record of the gold medalist does not always prove this. But the run-of-the-mill students are neither world beaters nor do they know anything of the practice of law as they come from the law school and they, if ever, are qualified to practice law at the expense of the public whom they ought to be serving. Neither academic nor practical they are for a longer or shorter but always for too long period until they grasp the essence of the practice of the law, a living misrepresentation by the Law Society to the public that the men they graduate and call to the Bar are qualified to exercise the privileges of the profession in the practice of law. . . . [In] fact the public are the guinea-pigs on which these men practice while they learn what the Law School ought to have taught them. The public are blameless—no wonder they dislike the lawyers—and so are the students. Need we go further.”¹

The Benchers were also men who cherished distinct ideas as to the acceptable conduct of fellow barristers and the loyalty and obedience expected of employees. These opinions too were to play a role in the crisis of 1949.

In Cecil Augustus Wright the Benchers were faced with a formidable opponent. Wright was throughout his career the most brilliant figure in Canadian legal education.

“[He] was truly a prodigy in the law. A Harvard S.J.D. while still age twenty-two (after graduating at the top of his class successively from the University of Western Ontario and Osgoode Hall Law School), a full time lecturer (as the title was then) at Osgoode Hall Law School at age twenty-three, he brought a brilliant intellect and matchless analytical powers to the examination of legal principles and to the teaching of law. He was not content to examine only the flowered manifestations of the law, the results of accepted and often inarticulated propositions, but he struck deeply and vigorously at the root conceptions.”²

Dr. Wright was not long in turning his critical faculties from an examination of cases to an examination of the deficiencies in Ontario legal education.

“He had convictions about the law, about law teaching and legal education, and about the role of lawyers in a society of growing complexity. If law was to serve social needs in a democratic polity; if Bench and Bar were to be alert to their creative roles; if lawyer-influenced legislatures were to be intelligent about the reach as well as the substance of legislation, there must be rigorous training in full time well staffed and library oriented law schools, in which students would learn that the law is not a discipline apart, but a reflection, hopefully, of the best social thought which we are capable of bringing to bear upon it. He resented the obvious fact that neither the lawyer nor the law appeared to enjoy much public esteem, and he saw in this a failure of the profession to make the public conscious of the social force of law and its educative element, and a failure too to be concerned with its progressive development.”³

Dr. Wright had never hidden his convictions on the proper form for legal education to take. The principles he adhered to were made clear in a 1938 article in the *Canadian Bar Review* and the position taken at that time was not particularly radical:

¹ FORTNIGHTLY LAW JOURNAL, Wed., July 2, 1947.

² Laskin, *Cecil A. Wright—A Tribute*, (1967) 45 CAN. B. REV. 213.

³ *Id.*

"Under a system of concurrent office and school work such as we have in Ontario it is not an easy task to interest students in any aspect of the law save that directed towards the quick results so characteristic of our commercial age.

"I believe that the future of schools lies in what looks like two opposite directions; in improving the technical branch of our training by some method of supervised and rounded practical work, and with a teaching of every course with some view of the social purpose that law serves, how it might be improved, how it ought to function.

"It is only by directing our law schools to teaching not merely the existing means—the law that is, if you like—but to an understanding of the part those means play and can best play in the whole order of society that we can produce a lawyer who as a member of a public profession will be able to command the respect of the public whom he serves."⁴

Another decade of teaching served only to sharpen these convictions and make more explicit the direction that educational reform should follow. When the Law Society appointed yet another Special Committee on Legal Education in 1947, Dr. Wright appeared before it three times to give advice on a reorganization of the Law School. His proposal was that a full time Law School with a full-time faculty be established and be given complete academic freedom. Dr. Wright had himself gone through the articling process and was aware of the advantages as well as the limitations of practical training. His recommendation on this subject was that a student's training in articles be completed through a one year apprenticeship to a qualified barrister at the end of his academic studies.⁵

These proposals, of course, were hardly more startling than the 1938 statement of principles and Dr. Wright himself pointed out that they amounted to no more than a request that the Law Society implement the recommendations put before it by the Lawyers' Club of Toronto in 1923. Within ten years of being made Wright's suggestions were to form the foundation of the province's system of legal education. Why, then, was the resignation and its dismaying repercussions necessary? The answer lies in the conflicting personalities of Dr. Wright and the Benchers whom he served.

If the men of the Law Society and the Legal Education Committee were obsessed with the values of an older tradition, Wright was a man thirsting after the reforms that would crown his teaching career. Dr. Wright carried his brilliance with an aggressive zeal. He was an impatient, almost impetuous, man who, in the words of a close friend, "did not suffer fools gladly". Acquaintances and students were apt to find him domineering. Whereas Dean Falconbridge had "had no stomach for a fight", controversy and combat were Wright's natural elements. He loved a fight when the odds were fair and neither discretion nor tradition could rob him of that delight. He was, with good reason, universally known as "Caesar". It was written of him after his death that:

⁴ Wright, *Law and the Law Schools*, (1938) 16 CAN. B. REV. 597.

⁵ See Wright, *The Legal Education Controversy in Ontario* (1949), 16 THE SOLICITOR 105. See also *Toronto Daily Star*, Jan. 29, 1949.

"Placidity was not his style. Wherever he saw smugness, wherever he saw obscurantism, wherever he saw unfairness, he was ready to lead a charge against it, partly from a love of the battle itself but with a particular gusto because of his loathing of smugness, obscurantism and unfairness."⁶

There was more, however, to Dean Wright than an unmistakable, and perhaps justifiable, intellectual arrogance. All who remember him recall the wit that marked his every action. He was an accomplished conversationalist and both friends and enemies found in him an enviable social companion. A female colleague adds that he was a "tremendously kind man" especially in defending those he felt had been badly used. He was a man, moreover, to whom convictions were of unique importance. In the words of another memorial tribute,

"Caesar Wright was a proud and sensitive man. He believed so thoroughly in the worth of what he was doing, was so wholly wrapped up in his work, that it was difficult to think of him other than as a lawyer and a law teacher. In this respect he was hard on himself; and the issues for which he stood touched him personally as well as professionally in a way that would not be true of many similarly involved."⁷

When the pugnacious Dean Wright differed with the patrician Benchers of the Law Society on a question of principle open conflict was the only possible result.

* * * *

The events surrounding the 1949 crisis are well documented. The personal factors that influenced those events, the motivations, intentions and expectations of the participants in the crisis, are more obscure. Even today, rumour, conjecture, and controversy shroud the actions of important figures.

Dr. Falconbridge found it necessary to resign his position in January of 1948, in the middle of the school term. The Law Society had little choice but to turn to Caesar Wright as his successor. Law teachers were scarce, Deans of law schools even scarcer and men of Wright's qualifications almost non-existent. Furthermore, Wright had for several years shared a major part of the School's administrative duties with the ageing Dean Falconbridge. Wright was not only the logical choice for the Deanship; he was, by any standards, the best possible man for the position. Indeed, the selection was so obvious that in the bitter aftermath of later events some members of the Law Society were to suspect, with no foundation, that Wright had persuaded Dr. Falconbridge to resign so as to take his place.

The frustration that some Benchers felt at having to make a man so notoriously opposed to their ideas Dean is admirably conveyed by the words of Mr. Chitty:

"Dean Falconbridge tendered his resignation on account of age and the increasing burden of the School. At that time, owing to post-war conditions, it was almost out of the question to find a new Dean outside of

⁶ *In Memoriam, Cecil Augustus Wright* (1967) 17 UNIVERSITY OF TORONTO LAW JOURNAL 247.

⁷ Laskin, *supra*, note 2.

the full time staff of the school and the Benchers' hands were practically forced into appointing the man next in line in the faculty—as they had begun to call themselves—and he was the outstanding proponent of the academicians and freely expressed himself on many occasions as dissatisfied with the part time school.”⁸

Both Dr. Wright and the Legal Education Committee knew that the differences of opinion which separated their respective concepts of legal education would make working together difficult. Discussions were held in February of 1948 with a view to arriving at some sort of *modus vivendi*. Dr. Wright reiterated his ideas on the necessity of the establishment of a full-time Law School and the desirability of other reforms. The Benchers, however, were not in a position to commit themselves to any one policy since the Special Committee on Education had not yet made its report. Dr. Wright decided to accept the position of Dean anyway. A year later, after the resignation, he recalled his understanding of these discussions this way:

“I indicated it was unsatisfactory to appoint a Dean unless policies had been clearly settled; but I did say I would co-operate with the Benchers until such time as their actions became completely incompatible and inconsistent with my views, at which time I would resign.”⁹

The undertaking to “co-operate” may have been subject to varying interpretations. The Benchers were well aware, and, indeed, suspicious, of the independence of Dr. Wright's views and they feared that he might embarrass them if put in a position of authority. The agreement to co-operate, which had evidently been the object of the discussions,¹⁰ was interpreted by the Law Society as an undertaking by Dr. Wright that he would accept the Society's direction on matters of legal education. It was also looked upon as a promise that he (Dr. Wright) would confine his criticism of the policies of the Law Society to submissions to the Legal Education Committee or to Convocation. In the Law Society's view, while private disagreement was to be expected and welcomed, the taking of public positions contrary to and critical of its ideas was a breach of the duty of loyalty and obedience expected of an employee.

For his part Dr. Wright seems to have taken the agreement to co-operate as a mutual understanding that he and the Law Society would work together peacefully, if not amicably. He expected that the Society would not oppose the fundamental tenets of his concept of legal education after making him the chief executive of its law school. He also expected that he would be asked to work closely with the Legal Education Committee on many major decisions. It does not seem to have entered his mind that he had been “muzzled” by his masters.

Dean Wright began his administration with confidence that the reforms he desired would soon be brought to pass. He conducted him-

⁸ Chitty, (Mar. 1949) 16 THE SOLICITOR 70.

⁹ Toronto Daily Star, Jan. 29, 1949.

¹⁰ In Wright's words: “In February 1948 I was approached by a Committee of three Benchers, and asked whether, if I were appointed as Dean, I would co-operate with the Benchers”.

Id.

self accordingly. When, immediately after his appointment, the Legal Education Committee asked him for proposals on changes in the administration of the School, he suggested, on the express premise that the School would become a full-time educational institution, that the curriculum be reorganized and that the full-time staff be increased. In June, the Law Society accepted these recommendations,¹¹ and two more full-time teachers, Mr. Walter Williston and Mr. John Willis, were added to the staff.

Wright's ideas on academic standards also became evident. After the spring 1948 examinations the school announced that 104 out of 323 first year students had failed. These disastrous results occasioned interest among more than just the students; the press reported a "Lawyers' Meeting to Probe Why So Many Fail".¹²

Contrary to some expectations the concurrent articling system was still in operation when the School re-opened in the fall. The first of Dean Wright's reforms were being implemented, however, and the students found themselves caught in an undeclared war between two educational systems. There is little doubt where their sympathies lay. In October the *Obiter Dicta* (the student newspaper) carried the following editorial:

"The new Osgoode Hall, with its Harvard Law School complex, is regarded almost with scorn by many practising lawyers. In turn the burden of work prescribed by an increasingly heavy syllabus certainly disregards the time which must be devoted to practical training! Our Law School is becoming the classic illustration of new wine in a very old bottle. We have talented instructors lecturing on an inadequate time schedule to overly large groups of students who have not prepared their work. We have hard-working principals demanding an equal standard of industry in their offices, and howls of protest go up when time off is asked to study for examinations. "When I was at Osgoode I didn't need four weeks to pass exams". But Osgoode is not a legal kindergarten. Today, if a student is adequately prepared it indicates either exceptional ability or, more probably, time spent in school work at the expense of office work. Real education requires more than uncritically attended lectures; it requires study and thought on the part of the student. Honest study and thought are deliberate processes which demand leisure time and a fresh mind. Under the present circumstances a student who has leisure time or a fresh mind is either failing his duty to his principal or is blessed with the endurance of a dray horse. It is just conceivable that two schools of thought, one determined to foster legal education in its broadest sense, and the other clinging to an incompatible system, have both had their way without the necessary corollary of giving ground on one side or the other. Whatever the case may be the result is painfully illogical.

"We do not question for a moment the sincerity and devotion of those responsible for legal education in this province but we do urge that the decision not to establish immediately a full time Law School be fairly and carefully reconsidered."¹³

Impatience was not confined to the student body. Dean Wright considered the slowness of the Legal Education Committee in adopting a program of full-time instruction folly and lost no opportunity

¹¹ Wright, *supra*, note 4.

¹² Toronto Daily Star, July 16, 1948.

¹³ (Oct. 1948) 23:1 *OBITER DICTA*.

to say so. Contrary to what the Benchers thought was an understanding between them, Dr. Wright on several occasions (and notably at the Mid-Winter meeting of the Canadian Bar Association) publicly attacked the deficiencies of the existing educational system. Unfortunately his attacks were so pointed, so specific with regard to the views of legal education that he rejected, and so barbed, that in many eyes, though undoubtedly not in Wright's, they became personal attacks on the old and highly respected men with whom he disagreed. Dr. Wright was aware of the Law Society's displeasure at his actions but he was not deterred by it. At a meeting in December of 1948 the Treasurer himself requested that Wright desist from his public criticisms. Some Benchers have the impression that he, in fact, agreed to do so. Wright evidently had a different interpretation of the conversation.

On January 14, 1949, Caesar Wright made one of his last public appearances as Dean of the Law School. On that date he told the York County Law Association that he would continue to call for reform in the operation of the Law School and restated his demand for a full-time Law School with a year's practical training to follow. Dr. Wright attacked the "narrow professionalism that only wants to teach existing techniques":

"Theory is as much the most important part of law training as the architect is the most important man taking part in the building of a house. Theory is not to be feared as impractical for it is simply getting to the bottom of the subject.

"It will not do for the legal profession to say that a man's education is complete before he enters law, and he must then be only trained in the tricks of the trade."¹⁴

One week later the profession had the last word.

On January 20, after a two year study, the Special Committee on Legal Education brought down its report. The nine-point programme submitted was endorsed by the Law Society. It was, in the words of Mr. Mason the Treasurer, an attempt to secure "a better balance between academic and practical training".¹⁵ The recommendations adopted were:

1. That a system of concurrent Law School and practical training be continued and that no change be made in the present entrance requirements or the length of service under articles prescribed for graduate and matriculant students.
2. That the present curriculum of the Law School be reviewed by the Legal Education Committee in collaboration with the Dean, and that such modifications and changes be made therein as may be deemed necessary to provide a better balanced course of training as between the academic and the practical branches of the course.
3. That the course of the Law School be limited to ten fifty minute lectures a week of which two will be held each day from Monday to Friday inclusive at 9 a.m. and 4.10 p.m.
4. That the practice group system be continued for first year students.

¹⁴ Globe and Mail, Jan. 15, 1949.

¹⁵ Globe and Mail, Jan. 21, 1949.

5. That steps be taken . . . to enforce the rule under which students are required to work in legal offices during the Christmas and long vacations except for reasonable holidays.
6. That the practice of holding the Christmas examinations prior to the Christmas holidays be restored.
7. That oral examinations be held in all three years. . . .
8. That consideration be given the appointment of a member of the profession as a salaried official of the Society on a full time basis to superintend the system of service under Articles. . . .
9. That consideration be given the establishment of a post graduate course in law.¹⁶

These recommendations were contrary to everything Caesar Wright had publicly fought for; they ignored or rejected every progressive trend developed in the field of legal education in the preceding fifty years; they re-established not simply the provisions of the 1935 Report (to which they bore a remarkable resemblance) but the pre-Falconbridge, 1924, system of legal training. Wright, of course, had not been consulted with regard to the proposals before they were put before Convocation. Unfortunately he was not even notified of their adoption! Dr. Wright first learned of the Law Society's complete rejection of his ideas from the following day's newspapers. One Benchers has characterized the lack of communication as an "unfortunate error"; Wright took it as a deliberate insult. As he informed Mr. Maçon in his letter of resignation:

"In view of the fact that I am charged with the administration of the Law School it seems to me that it would have been only an act of common courtesy to inform me of such a startling departure from all my recommendations to the Benchers before publishing them in the press. The fact that I was not informed and the tenor of the recommendations lead me to the conclusion that my resignation as Dean must have been contemplated as a possibility by those persons drafting the report."¹⁷

Dr. Wright had probably had few doubts about the course of action required of him. His faculty, that small but vital band of full-time teachers, were in a more delicate position. Their commitment to an academic system of legal education was not as well known as Wright's nor had it been as obviously and publicly rebuked by the Law Society. Furthermore, the uncertainties attendant on precipitate resignation were not to be braved incautiously. The Faculty met on the afternoon of the 22nd to discuss their alternatives. Undoubtedly the facts that the University of Toronto had for several years shown interest in expanding its Law Faculty and that Toronto's Dean of Law, Dr. Kennedy, was old and very close to retirement, did not escape their notice. They, however, had no concrete idea as to how they would continue their careers if they gave up teaching at Osgoode. In the end three members of the full-time staff, Professors Willis, Laskin and Edwards, decided to throw their full support behind Dean Wright and resign with him. Of the two remaining members of Faculty Mr. Williston was planning on returning to practice at the

¹⁶ Toronto Daily Star, Jan. 21, 1949.

¹⁷ Globe and Mail, Jan. 22, 1949.

end of the year in any event. Former Dean Falconbridge elected to remain at the school. He had taken no part in the events leading up to the crisis nor did he make any comment on those events in the following years. His reticence, discretion and loyalty earned him the unqualified respect of all parties in the conflict.

All four resignations were accompanied by offers to continue teaching until the end of the school term. The offers were accepted and, though some students recall that they had doubted it would, the school carried on its usual functions on January 24th, the day after the resignations were announced. On that day Dean Wright's appearances in class were greeted with cheers. He explained his resignation to his students with the words, "There comes a time when no other honourable course is open to you but to take a public stand".¹⁸ The young men understood.

A special evening meeting of the student body was held two days later on the 26th. A sympathetic, if not exactly forceful, resolution was passed:

"We, the members of the Osgoode Hall Legal and Literary Society, respectfully disapprove the policy on legal education adopted by Convocation. Since we are not in a position to endorse any particular policy, we earnestly request both parties to the issue to meet, discuss, and reconsider their previous decisions."¹⁹

The *Obiter Dicta*, recalling the plea for reform that it had published in the fall, was reduced to clever, but frustrated, satire:

"When we suggested in our last issue that the time was ripe for a radical change in the Law School, we little realized how ripe it really was. We were not optimistic enough to expect that the system would be altered before the next issue went to press. We understand the Benchers; the dizzy speed with which the decree was handed down clearly demonstrates that our last editorial had absolutely no part in the decision.

"We are sure that the renovation of our system of legal education will be hailed by many as masterful in its scope and incisive in the perception of the problem which it has resolved.

"Now that the intolerable encroachment of Law School lecture hours has been eased students will again be available in sufficient quantity during the Christmas vacation; and more particularly, in the mornings when their minds are most fresh leaving the period from four to five o'clock when they are of least use, to the relatively unimportant task of taking lecture notes.

"It is incomprehensible that the result of such careful and unbiased research should have been greeted with what can only be described as petulant ingratitude. At least those who guide our academic destinies can rest assured that never again will heresy issue from an Osgoode lecturer's rostrum. Once more we can return to law as it was rather than law as it is. Logic has triumphed over prejudice."²⁰

The crisis had an impact, though one of widely varying intensity, on the bar as well as on the students. The Dean's resignation itself was borne with equanimity by most of the profession; many men looked upon it as an event in a private quarrel from which it would

¹⁸ Globe and Mail, Jan. 25, 1949.

¹⁹ Globe and Mail, Jan. 27, 1949.

²⁰ (Feb. 1949) 23:2 OBITER DICTA.

be prudent to remain aloof. One barrister recalls that the younger practitioners in the profession were aware of the tempest at Osgoode Hall but did not take it too seriously; the whole affair smacked of "Gilbert and Sullivan". Older and rural lawyers were less conscious of the conflict over legal education and, if they heard of the crisis at all, were apt to assume that the Legal Education Committee "knew what it was doing" and could handle the situation quite competently. The senior generation of barristers tended to be the ones most involved in the personal struggle with Dr. Wright. They were suspicious of Wright's ideas and motives and had been deeply offended by the treatment that he had accorded to such leaders of the bar as Mr. Mason. Nor could these men understand Wright's style of verbal and intellectual combat, his lack of discretion and his impatience with private dialogue. Dr. Wright's persistent public criticism of the Society forced some of the older barristers to believe that he had "broken faith" and gone back on his word. To a certain type of mind there is no more serious charge to be brought against a member of the legal profession.

This is not to say that there were not practitioners in the province and, indeed, among the Benchers of the Law Society, who knew what Dr. Wright was trying to do and supported his calls for reform. It was widely held, in fact, that the system of legal training was outmoded, that full-time academic legal studies were an inevitable development, and that the Benchers' nine-point program was a totally inadequate solution. Unfortunately, while few men could honestly disagree with Dr. Wright's ideas, even fewer could agree with his methods of putting those ideas forward. "We wanted to support him but we couldn't—he embarrassed us", said one Bencher who was at the time (and remained thereafter) a good friend of Caesar Wright. The many members of the bar who felt that the Law Society's educational program would do irreparable harm to the Law School had to take on the delicate task of working for reforms without supporting the chief reformer.

The ambiguous position in which many lawyers found themselves was apparent at the Niagara Falls meeting of the Ontario Branch of the Canadian Bar Association which was held in the first week of February 1948. All of the parties to the conflict, including Dr. Wright and the faculty members who had resigned with him, were present. The resignations, however, and the critical problems faced by the Law School were never frankly discussed. A very large majority of the men present endorsed a motion that termed the Benchers' rules inadequate and called upon Convocation to reconsider its decision to limit lecture hours²¹ but "it was not politic" to make any further or more specific reference to the crisis.

The quarrel which the bar found so distasteful delighted the press and the broadcasters. The events surrounding Wright's resignation were fully reported and were frequently discussed in editorials. The

²¹ *Globe and Mail*, Feb. 6, 1949.

press were almost unanimous in their condemnation of the Law Society and in their approval of Dean Wright. As the disastrous impact that the Law Society's recommendations would have on legal education became more apparent members of the profession conquered their reticence and entered the battle. If they could not defend the vanquished Dean they could at least preserve the School from intellectual extinction. Representations and submissions were made to the Law Society but since the bar had no direct influence over the Benchers and their decisions more public forms of dissent were looked for. Articles and strongly worded letters appeared in newspapers and periodicals. There was even a radio debate between Mr. Carrick and Mr. Chitty over the Society's actions.

The Law Society should not have needed much prompting on the question of reconsideration. Though the resignations could not have been totally unexpected their results were unsettling. The Society was faced with the unenviable chore of running a Law School bereft of professors and stripped of prestige. It was thought in some quarters that the resignations might "bring the Legal Education Committee around"; that Dr. Wright's show of force would result in a vindication of his convictions. Such an outcome would, of course, have been grossly unpalatable to the members of the Society who felt they had suffered personal affronts in the previous months and was probably never a real possibility.

Despite the protests that its actions had occasioned the Law Society was not prepared to abandon the stand it had taken. The depth of feeling that Dean Wright's actions had aroused in some of the Benchers was demonstrated by the proceedings of the February 17 meeting of Convocation at which the resignations were considered. Mr. Cassels, the Chairman of the Legal Education Committee, submitted a report recommending that Dean Wright's resignation be accepted forthwith (though he was to be requested to continue his lectures until the end of term), and that the resignations of Professors Willis, Laskin and Edwards be accepted as of the end of the year. It was then suggested that, instead of adopting the report as read, a resolution be passed accepting Dean Wright's resignation and deferring action on the other three resignations until after a complete review of the situation by a Special Meeting of Convocation. Cooler heads prevailed and in the end a resolution deferring consideration of all the resignations was adopted.

The matter was soon to be taken out of the Benchers' hands. Sidney Smith who was then President of the University of Toronto had, many years earlier, been a lecturer at Osgoode Hall and was a friend of Dr. Wright. Consultations were held and, in due course, Dr. Wright and Professors Willis and Laskin notified Convocation that they had received offers of teaching positions with the University of Toronto Faculty of Law (Professor Edwards went into practice). This news did not move the Law Society to action and on March 10, 1949 it was announced that the three men had accepted the Univer-

sity's offer. Dr. Wright was to succeed Toronto's Dean Kennedy who intended to retire that July.

The solution, if it may be called that, to the problem of the resignations left open the question of whether the nine-point program of educational reorganization should be changed or altered in any way. This incredibly retrogressive set of recommendations had not been taken seriously by some observers. Dr. Wright, for example, found the suggestion that a post-graduate course be considered "laughable" since "a post-graduate course in law can only be founded on a sound undergraduate course."²² It is now, however, generally felt that the program proposed on January 20 was a serious, though wrong-headed, attempt to deal with Ontario's legal training problems. Men on both sides of the conflict deny that it was a calculated attempt to force Dr. Wright to resign. It might be added, however, that one Benchers has suggested privately that by January of 1948 the Law Society was so disenchanted with its irascible Dean that his resignation came "just a step ahead of being sacked".

The chorus of protests that greeted its proposals with regard to the law school brought the Law Society to the realization that it was out of touch with many of its practising members. At the Niagara Falls meeting of the Canadian Bar Association aforementioned, the Treasurer took the unprecedented action of making a report directly to the assembled lawyers of the province (though he did not mention the resignation crisis in that report). As a further indication of its change of heart the Society passed a resolution requesting all county law associations to submit their views on the legal education controversy to Convocation so that the decisions taken in January could be reconsidered. Thirty-five out of Ontario's forty-two law associations responded with briefs or submissions.²³

Perhaps the truest measure of the extent to which the Law Society was ignorant of the opinions of its members may be found in the fact that its educational program was extensively altered even after the problem of Caesar Wright's opposition was removed. In late April of 1949 a two-day Convocation of Benchers gave a complete reconsideration to the problem of legal education. On April 25th, Mr. Mason announced the decisions arrived at with these words:

"The new scheme of legal education is designed to preserve the best in the existing system and at the same time meet the views of those who feel that more time should be devoted to academic training."²⁴

It must be admitted that the new scheme preserved almost nothing of the program presented barely three months earlier. Indeed, its provisions were liberal enough that they might, under less troubled circumstances, have satisfied Dean Wright's requirements. Under the new plan students were to put in two years of full-time legal study at

²² Toronto Daily Star, Jan. 21, 1949.

²³ Law Society of Upper Canada, *Proceedings in Convocation* (hereinafter *P.C.*) Feb. 17, 1949. See also, *Globe and Mail*, Feb. 19, 1949.

²⁴ *Globe and Mail*, April 26, 1949.

Osgoode Hall followed by a third year of practical training in articles in any law office in Ontario and a fourth year of concurrent practical and academic training in Toronto. Matriculant students were still to be admitted but they were to spend two years in articles before beginning their academic studies. The full-time Law School at Osgoode Hall had finally come into existence.

* * * *

The April 1949 reforms were, in the light of previous events, so far reaching and carried the School so close to full academic status that it is difficult not to question whether the crisis was really necessary. As suggested earlier Caesar Wright's ideas on legal education were neither original nor unusual; they were radical only in comparison to the painfully outdated ideas of his opponents. As his later career at the University of Toronto was to demonstrate Wright was in fact conservative in his approach to education. He was in some ways fully as enamoured of the concept of law as a "professional" discipline as were the Benchers. On the other hand the Law Society, when forced to reconsider its position, proved to be neither deaf to reason nor incapable of progressive change. Why, then, was force necessary to bring the Society to that reconsideration? Why was reconciliation impossible?

The whole humiliating episode between Dr. Wright and the Benchers can probably best be explained as an immense personality clash; as a quarrel that got out of hand. The rigid positions that were taken on either side were, in large part, attributable to a conflict peripheral to the real questions of educational reform. The compromise that would have created a solution acceptable to both parties were barred by passions not by principles.

Dr. Wright and his colleagues left to take up their duties at the University of Toronto amidst bitterness and recrimination. Benchers at the time spoke openly of "the sabotage of the academicians and the insidious propaganda that they have spread",²⁵ and hinted darkly that the past months' events had been a plot to ruin Osgoode while making the University pre-eminent in the field of legal education.

Many sores are healed by the passage of twenty years. Tribute must now be paid to the two decades of service Caesar Wright gave to Osgoode before his resignation. Some of his friends are willing to suggest that these were the most brilliant and fruitful years of his career; that Osgoode students caught him at the top of his form. Even Wright's resignation benefited the School he had served for so many years since it was, at least in part, through that final act that the Law Society was impelled to make the reforms that had been too long avoided.

Wright and his fellow professors left a final challenge with Osgoode and the Law Society on their departure.

²⁵ Chitty, *supra*, note 8.

Some members of the Law Society have stated publicly that the law school in Ontario is not and should not be an "educational institution". They have also stated that it is no function of the law school to do other than provide a strictly vocational training. My colleagues and myself feel that this states quite simply the sole issue which is before the profession and the public in Ontario. At a time such as the present we feel that it is imperative to establish a School which must qualify, not merely professional practitioners as we have known them in the past but lawyers capable of acting in their respective communities as informed leaders of opinion in public affairs. To revert to a system which re-emphasizes mere "tricks of a trade" as opposed to an ability to meet and assist in solving the problems, familiar and unfamiliar, which will face a lawyer in the future appears to my colleagues and myself as a vain effort to turn back the hands of time and to delude ourselves into believing that we can retain the simplicity of days long past by ignoring the realities and complexities of present day life. No problem is ever solved by a refusal to face it. We feel that we have faced the broad issue in the only way in which we could and we can only hope that, unpleasant as the immediate consequences may be, legal education may, as a result, be one of enlightened progress in the interests of the public whose servant the legal profession is.²⁶

The enlightened progress was late in coming to Osgoode Hall but it is time to admit that Caesar Wright was largely responsible for making its coming possible at all.²⁷

2. *Epilogue: Charles Ernest Smalley-Baker and Reconstruction*

Despite its sometimes comic overtones the crisis of 1949 was a shock of traumatic proportions to the Law Society of Upper Canada and to Osgoode Hall Law School. The shock was a necessary and perhaps inevitable one. It was also useful. Caesar Wright's resignation and the events that followed finally demonstrated to the Law Society the inadequacy of its concept of legal education. This one extreme act drove home the necessity for reform in a way that decades of protest and persuasion had been unable to do. The history of the next decade is largely an account of the recovery from this shock.

²⁶ Wright, *supra*, note 5.

²⁷ In 1967 the Law Society did in fact make a generous though unfortunately posthumous, acknowledgement of Dean Wright's contributions to legal education. At the spring graduation exercises of that year the Chairman of the Legal Education Committee read the following testimonial to his work.

"Mr. Treasurer, I have the honour to present to you the following citation:

"For eighteen years Cecil Augustus Wright was the Dean of the Law School of the University of Toronto. He began his teaching career 40 years ago as a lecturer and subsequently became Dean of the Osgoode Hall Law School. He has rightly been called the architect of legal education in Ontario. The fact that this Province enjoys a system of legal education second to none in the common law world is to a considerable extent attributable to his selfless dedication. As a teacher he had no peer and generations of law students first received from him a knowledge and understanding of law as an instrument of social justice.

"Never once did he compromise his standards, nor was he dismayed if his was the only voice to criticize the inadequate or to advocate reform. He lived to witness the realization of his goals and many legal reforms stand as his monuments. For him, the finest tribute is that many who were his students and colleagues remain to pursue his ideals and practise his precepts.

"In March of this year, he accepted your invitation, Mr. Treasurer, to receive the degree of Doctor of Laws, *honoris causa*, and it is a matter of deep regret that his death intervened. It is fitting that the name of Cecil Augustus Wright be recorded among those worthy of our highest honour."

The changes in the educational system that occurred from time to time in subsequent years were not, though they may have seemed so at the moment, separate and distinct events but were, rather, parts of a continuing adjustment to the realities made clear by the 1949 breakdown.

* * * *

By mid-March of 1949 it was apparent that Osgoode Hall Law School had lost almost all of its full-time Faculty. Dr. Falconbridge remained at his post but he was too old and too occupied with his scholarly writings to assume a major role in the rebuilding of the School. The Law Society's first duty was then to find a Dean who could take over Wright's duties by early summer. Such a task would never have been easy but, under the somewhat embarrassing circumstances, it probably seemed well-nigh impossible. Canadian men possessing the requisite qualifications were rare but evidently a few, the most notable among them being Professor Corry of Queen's, were contacted. All turned down the offer of the position. It was not within contemplation that professors from the United States (the birthplace of all the heresies that Dean Wright had propounded) would be suitable; there was nowhere to go but to England.

On April 20th Convocation resolved to send two Benchers forth-with to England with instructions to find, if possible, a suitable Dean. Messrs. Beaton and Chitty were the chosen ambassadors. Upon their arrival on "the Old Sod" these gentlemen consulted with Norman Birkett, Frank Gahale and Dr. Keeton and settled on a list of law teachers to approach with their offer. The three most desirable prospects were Llewellyn Davies, a lecturer at a Welsh university; Glanville Williams, who was then teaching in the midlands; and C. E. Smalley-Baker who was Dean of Law at Birmingham. Dean Smalley-Baker was the first man contacted but he declined the Benchers' proposition and suggested that Professor Davies would be a better choice for the job. When, in turn, Professor Davies refused to stand, Dean Smalley-Baker reconsidered his previous decision and accepted the position. Professor Williams was never contacted.

The new Dean later explained his change of heart in these words:

"When it was first offered to me I refused because I felt that I could not leave my Faculty, which I had created, and my Holdsworth Club, which I had borne and nourished for so many years; but two of the Benchers flew over from Canada and put it to me as a challenge—a challenge of legal education in my native land—to return and undertake the Deanship of the great Law School of Osgoode Hall. I shall miss many pleasant associations in Birmingham and elsewhere in England, but I have accepted the challenge."²⁸

Dean Smalley-Baker's appointment was put before Convocation on May 19th. The Law Society was more than pleased with their "catch". Charles Ernest Smalley-Baker had been born in New Brunswick. He carried degrees from Acadia, Harvard (LL.B.), Oxford and Birmingham. His scholastic record was unimpeachable and his years

²⁸ *Osgoode's Fifth Dean* (1949) 24:1 OBITER DICTA 8.

of experience were distinguished. He was, as one Bencher has put it, "the complete answer to Caesar Wright."

Many observers have felt that Dean Smalley-Baker's best years were behind him by the time he took up his duties at Osgoode. Neither his teaching nor his administration in the following nine years was considered outstanding. He did, however, create in the School a very necessary, and perhaps critically important, *esprit de corps*. The student newspaper greeted him in the fall of 1949 with almost pathetic joy. "We bid the Dean every success and promise our wholehearted support, for we do so desperately wish to be proud."²⁹ The wish was, to one degree or another, eventually fulfilled. It was entirely characteristic of Dean Smalley-Baker and his years in office that one of his most lasting contributions to the School was the securing, for the first time in the institution's long history, of an Osgoode Hall Law School coat of arms.³⁰

It took, of course, more than a new Dean to resurrect the School. The problem of securing staff to teach the necessary courses to a student body of almost 700 members was formidable. Fortunately Dean Smalley-Baker brought with him a brilliant protégé from Birmingham, David L. Smout, as a full-time lecturer. It is a widely held opinion that the school's survival in the uncertain years after the resignations was due in large part to Mr. Smout's efforts. Smalley-Baker, Falconbridge and Smout formed the nucleus around which an unprecedentedly large group of part-time lecturers gathered. Some of these men, such as W. Z. Estey and S. L. Robins, were brilliant young barristers with sound academic backgrounds and graduate legal degrees: others, such as R. M. W. Chitty and H. W. A. Foster, were pillars of the profession whose interest in the Law School was decades old. That such a faculty could be established at all is a tribute to both the versatility and the nerve of the Toronto bar. Many of these men received their "appointments" over the telephone and were instructed later on which subject they were to teach.

Under such unusual circumstances the first year of the reorganized Law School's operation could be expected to be chaotic. It was. One part-time lecturer recalls that there were no faculty meetings at all in the 1949-50 school year nor was there any discussion or direction on matters of curriculum. The staff were out of touch with both the Dean and each other. Smalley-Baker's most memorable efforts over the year were directed at "anglicizing" the lecturers by having them wear gowns to class and avoid the use of American terms in their lectures and examinations. Some of the practitioners were delinquent in their lecturing duties; one never showed up at all. The editor of the student paper remarked: "In some cases lecturers might profitably be a little less expert and considerably more regular".³¹

²⁹ (1949) 24:1 OBITER DICTA 7.

³⁰ Smalley-Baker, *A Coat of Arms for the Osgoode Hall Law School* (1955) 5 CHITTY'S LAW JOURNAL 164.

³¹ (1950) 24:2 OBITER DICTA 39.

Conditions became much more stable in the following year and a succession of small but significant changes began to take place. In 1950 the full-time staff was augmented by the appointment of Mr. H. Allan Leal and Mr. Donald B. Spence to teaching positions. Three years later Mr. J. D. Morton replaced Mr. Smout. In 1954 Dr. Falconbridge, having completed fifty years of service to the school, retired from teaching and was replaced by Mr. J. T. Blanchard. The core of the Faculty that would carry the school to the status of a full-time, academic, degree granting institution was gradually being formed.

One other reform should not be overlooked. In 1952 the Law Society dropped the provisions with respect to Matriculant students from its outline of requirements for admission to legal studies. With the fall class of 1953 the School's basic standard of admission became, for the first time in its history, a university degree.³²

Individual reforms of this sort were important but they did not meet the very serious problems that had been either created or left unsolved by the April 1949 scheme of legal education. The Law Society was aware of the deficiencies of the four-year law course but could not see any easy solution. Perhaps the major barrier to reform at this time was the fact that the students of the Law School were still immediately made barristers and licensed to practice upon the completion of their studies. Some plan had to be devised whereby the claims of the School and University to academic freedom could be reconciled with the proper discharge of the Law Society's duty to the public.

The words of Mr. D. Park Jamieson, a Benchers, convey some sense of the frustrations that impeded the Law Society's search for an answer to the education quandary.

"It is not supposed that the present system contains within its provisions a panacea for the ills that beset legal education, but it is a serious and well-founded attempt to bridge the gap between law study and law practice, and to ensure, in the limited time available, that those persons who are held out to the public as being qualified to practice law as a profession have, in fact, acquired the type and standard of training to warrant that certification.

"In the last analysis it is the responsibility of the Benchers to certify that persons called to the Bar and admitted as solicitors are qualified to practice law and serve the public. That must, and will, never be lost sight of in Ontario."³³

The 1949 reorganization of legal education gave rise as well to less abstract and more immediately pressing problems. As of March of that year the Law Society was faced with the question of what recognition to extend to the University of Toronto's enlarged and

³² The 1926 reform in admission standards made two years of a university course the prerequisite to legal studies. This provision was abandoned in favour of the honours matriculation standard of admission in 1932. In 1957 the Law Society lowered the admission standard to two years of a university course.

³³ Jamieson, *A Four-Year Law Course in Ontario*, (1953) 31 CAN. B. REV. 894.

revitalized Faculty of Law. By April 1949 the Treasurer was able to report to Convocation that he had had several conversations with Toronto's President Smith. A committee of Benchers was subsequently set up to hold meetings with the representatives of the University on matters of legal education.³⁴ The results of this committee's deliberations were announced the following September. The Law Society's decision was that graduates of the University of Toronto's Law School would be permitted to enter Osgoode Hall's law course in its third year. Such students thus escaped the first two years of full-time lectures at the Hall but had to participate in the articling and the concurrent lectures and articling years. Dr. Smith, in an ebullient mood, hailed the announcement as "one of the most significant [steps] in the history of legal education in Canada."³⁵ His law students were, on the whole, less enthusiastic.

Under these provisions University of Toronto law students were forced, in spite of their very complete legal education, to study for a year longer than their Osgoode Hall colleagues. The attendance at the fourth year lectures demanded of them smacked of an insult to their academic training. No lesser critic than Mr. Justice Rand attacked the Law Society on this point:

"There is no objection to the additional year of strictly office training; but, as can be seen, the fourth year's course, so far as it includes lectures, has more than been covered by the University School and, with the additional office attendance, rules out, except for a few whose time and means are not matters of concern to them, a legal education at any other, even the finest, of the world's law schools."³⁶

Caesar Wright, of course, was far from being timid or silent in his defence of the University Law Faculty and its students. His annual reports on the School invariably carried a few barbs aimed at the Law Society of Upper Canada. The following complaint, made in January of 1952, was typical:

"The University of Toronto School of Law has the strongest staff for teaching and research ever gathered in any Canadian law school, but in the last year the Law Society of Upper Canada has made no move to grant it full recognition."³⁷

Dean Wright's crusade for fair and equal treatment for his law school was consistently supported by the Toronto press. Indeed, the University of Toronto's side of the controversy was so regularly and fully dealt with by the newspapers that many Benchers suspected that Wright was using his personal influence to gain "a pipeline" to important editorial pages. The Law Society even resorted for a time to printing rebuttals of newspaper articles in the *Ontario Weekly Notes* so as to get its version of the problem before the public.

³⁴ P.C. April 20, 1949.

³⁵ Globe and Mail, Sept. 17, 1949. The exemption from part of the Law School's course was a privilege granted only to University of Toronto graduates in law. It was not until 1954 that the Law Society extended the same rights to graduates in law of other "approved universities". The Society did show itself to be fairly liberal in "approving" universities.

³⁶ Rand, *Legal Education in Canada* (1954) 32 CAN. B. REV. 387 at 411.

³⁷ Toronto Daily Star, Jan. 28, 1952.

The argument between the University and the Law Society was genuine; but the press may have distorted and heightened it beyond its real importance. The University of Toronto law students took the matter very seriously: they had, after all, gambled a year of their lives on the conviction that university legal education was the best preparation for a career in law. The controversy reached a rather bizarre climax on February 27, 1952, when University law students marched down University Avenue with pickets and distributed hand-bills calling for equality of treatment. Ironically, the students almost found themselves in legal trouble since, as it turned out, they were demonstrating without a parade permit. Dean Wright, who demanded of himself the same courtesy that he expected of others, sent a written apology to the Law Society for the disturbance.

The Law Society, with understandable but exasperating rigidity, refused to be persuaded by the press, moved by the students or hectored by Dean Wright. Some Benchers even suggested, with almost wilful blindness, that the fact that the University had enrolled a mere twenty students in its law course in 1952-53 indicated the unpopularity and deficiencies of degree courses in law.³⁸ Some observers began to despair of the Law Society's ability to reform itself and called upon the legislature to "strip the Benchers of their monopolistic privileges".³⁹ Fortunately so drastic a move was not to prove necessary.

Though the Law Society could hold itself insensitive to outside pressures it could not disregard the very real difficulties that plagued its School. The 1949 system of training had been based on the premise that Osgoode Hall would remain the province's only law school. The limited recognition given the University of Toronto's Faculty of Law did nothing to destroy the validity of this assumption; the overwhelming majority of law students continued to come to Osgoode. The success of the School in this regard was its undoing. The Legal Education Committee had expected that the enormous enrolments of the years immediately after the war would dwindle and that the School would eventually return to its pre-war size. By 1955, however, it was apparent that this was not going to be the case. "In that year the figure had climbed to 670 students in actual attendance at the School and it appeared that a new level, approximately double the old, had been established."⁴⁰

Osgoode Hall, of course, was not equipped to handle anywhere near that number of students. The Law Society still bore the entire cost of running the school (losing, according to one estimate, \$75,000 a year in government grants by maintaining the School's private status⁴¹) and could ill afford the expansion in facilities that was so painfully necessary. Even more unfortunate than the inadequacy of

³⁸ *P.C.* Fall 1953.

³⁹ *Globe and Mail*, Sept. 19, 1952.

⁴⁰ LAW SOCIETY OF UPPER CANADA, REPORT OF THE SPECIAL COMMITTEE ON THE LAW SCHOOL, (14th February, 1957) 1.

⁴¹ *Globe and Mail*, March 26, 1952.

the School's building was the fact that throughout these years the students' library stagnated for want of funds at the 8000 volume level achieved during Dr. Falconbridge's tenure.

There were two possible solutions to these problems. The Law Society could either expand the School, regardless of expense, so as to be able to serve all Ontario law students, or it could devise a scheme whereby responsibility for at least the academic portion of the law student's training could be shared between the School and the province's several universities. Perhaps in token of the very serious state in which it found itself the Society elected to pursue both courses simultaneously.

Plans were set in motion in 1955 for the construction of a major addition to the Osgoode Hall Law School. A two-storey wing, which was to cost \$1,300,000, was designed. Its construction began with a sod turning ceremony on April 7, 1956.⁴² When completed, after various difficulties, in the fall of the following year, the building was, in the words of its architect, "a quiet well-mannered house with no homage paid to the gods of novelty".⁴³ Beneath the new wing's discreet and dignified exterior, however, were steel reinforcements and concrete footings capable of bearing an additional six floors and of holding four more 400-seat lecture halls.

At the same time as the Law Society was preparing to supervise the education of all of the province's law students talks were being held which were to render such preparation unnecessary. In January of 1955 a Special Committee on Law School was appointed by Mr. Carson the Treasurer of the Law Society. This committee took charge of the planning of the new building but once the addition was safely under way it turned its hand to more significant matters. At the invitation of Mr. Carson the committee met on April 30th of the same year with executives of all Ontario colleges and universities and discussed in general terms the relationship of law to other academic disciplines.⁴⁴ Soon more specific and significant work was being done in smaller committees. John Arnup, D. Park Jamieson and Dr. J. A. Corry of Queen's University addressed themselves to the problem of working out a relationship between university legal studies and the Law Society's power over admissions to the bar. Yet another committee, this time composed of H. Allan Leal, Dean Wright and Dr. Corry, set out to draft the requirements and standards to be demanded of University Law Schools in Ontario. He acted as a catalyst for the sometimes incompatible and bitter parties to the negotiations. He is remembered by those who worked with him as a fountain of patience and persuasion; as the "cement that held things together".

Early in 1957 Messrs. Arnup, Jamieson and Corry secluded themselves for two days in the Royal York Hotel and hammered the conclusions arrived at by hours of separate consultations into a single

⁴² Toronto Telegram, Jan. 18, 1958.

⁴³ *P.C.* 1957.

⁴⁴ Law Society, *supra*, note 38 at 3.

program of reform. At the close of their session Dr. Corry telephoned Dean Wright and outlined the proposals settled upon to him; Caesar was jubilant. When, a few days later, the students of the University's Law School learned of the reforms they gathered in the library of the school and cheered.

The new plan for legal education in Ontario was adopted by the Law Society on February 15, 1957. On that day the voices that had for a half century cried for reform were stilled and the ghosts of the 1949 debacle were exorcised. The standard of admission to Law School was made either a university degree or (out of deference to the length of time that the legal course itself took) successful completion of two years of a university course after senior matriculation. The academic legal course was made a three-year full-time program which was to earn the student a law degree. All Ontario universities possessing adequate facilities and following an acceptable curriculum were to be able to offer fully recognized legal studies. Osgoode Hall itself was to become a government supported degree granting law school in no way favoured over any other Faculty of Law. The Law Society's duties with regard to certification for practice were discharged by requirement that every graduate article for one year upon completion of his studies and then take a six-month Bar Admission course prior to being made a barrister.⁴⁵

Academic legal education had at long last come of age in Ontario.

* * * *

It is tempting to suggest that the 1957 reforms were an obvious and inevitable development in the history of the Law School. Most of the changes adopted by the Law Society had been advocated in one form or another for decades. We should, however, eschew the wisdom of hindsight. In the light of the events of earlier years (the painfully wrought Falconbridge reforms, the archaic 1935 reorganization, and, of course, the 1949 crisis), the Law Society's 1957 decisions could truly be called radical and could be praised for their boldness. The Benchers of the reconstruction era were men honestly confused as to the best course for legal education to take; men sincerely searching for a compromise that would satisfy the demands of both the academic and professional worlds. That the solution arrived at now appears to have been the correct one should be taken as a tribute to the diligence of their search and not as evidence of a lingering obtuseness.

The 1957 reorganization was both an end and a beginning. The discontent that had seethed about the School for the previous ten years evaporated; the politely-concealed hostilities that were the residue of the crisis died away. The School's financial and administrative problems were solved by large infusions of government money. The achievement of formal academic status was not a goal in itself but rather a foundation for a further evolution in the school's educa-

⁴⁵ See generally, Law Society, *supra*, note 38.

tional role. Succeeding years were to see Osgoode Hall Law School become an academic institution in a sense and to an extent that Dr. Wright had never imagined. It was to become in the end a university faculty of law.

The School's transition to its new status was sometimes awkward (at one point three different classes completed their studies and graduated within the same year) but never uncertain. In 1958, Dean Smalley-Baker resigned to become Dean Emeritus and H. Allan Leal (who had recently completed a Master of Laws programme at Harvard University) was made his successor. Dean Leal was given an unprecedented degree of academic freedom by the Legal Education Committee and a steadily expanding faculty of full-time professors of law grew up around him. The long languishing student library was revived by the newly available government funds and embarked upon a period of growth which continues to this day. As new law schools opened elsewhere in the province (at Queen's University, the University of Western Ontario, and the University of Ottawa), enrolment at Osgoode dropped to manageable proportions and the newly-built offices and lecture rooms proved adequate for existing needs. The Law Society (at very considerable private expense) made its Bar Admission Course a complement to academic legal studies and a complete introduction to practical professional conduct.

It gradually became apparent, however, that further changes were necessary. By the mid-1960s the pressure on all Ontario law schools from students seeking admission was so great that Osgoode was again forced to consider the question of enlarging its facilities. As the number of graduates in law increased, the Bar Admission Course expanded. It was soon obvious that the Law School and the Bar Admission Course could not continue to occupy the same building.

Academic legal education was becoming more complex and more expensive as it became more popular with Ontario's students. Osgoode's faculty became painfully aware that law could never be properly taught in a setting isolated from the social and cultural sciences with which it was so intimately connected. At the same time the Law Society was brought to the realization that the supervision and administration of a large Law School was beyond its expertise. No crisis was necessary this time. Negotiations were held and it was decided that the law school should become the Osgoode Hall Faculty of Law of York University and should be physically moved to new facilities on York's campus.

The 1968 move to York University (which is admirably and authoritatively documented elsewhere)⁴⁶ was as much an outgrowth of the 1957 reforms as those reforms were the completion of the 1949 reorganization. In the history of the remarkable changes that occurred in these twenty years, 1957 is the watershed. In that year Osgoode Hall Law School outgrew its past and laid claim to its future.

⁴⁶ See Arthurs, *The Affiliation of Osgoode Hall Law School with York University* (1967) 17 U. Tor. L.J. 194.